

1 LOTTI BLUEMNER
2 *In Propria Persona*
3 9663 Santa Monica Blvd., Suite 162
4 Beverly Hills, California 90210

5 USDC SDNY
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10
11 **UNITED STATES DISTRICT COURT**
12 **SOUTHERN DISTRICT OF NEW YORK**

13 ERGO MEDIA CAPITAL, LLC; CEE
14 GEE CEE, LLC and ERIK H. GORDON,

15 Plaintiffs,

16 v.

17 LOTTI BLUEMNER,

18 Defendant.

19 Case No.: 15 CIV 1377 (LGS)

20 **DECLARATION OF LOTTI**
21 **BLUEMNER IN SUPPORT OF**
22 **DEFENDANT'S MOTION TO**
23 **DISMISS ACTION FOR LACK OF**
24 **PERSONAL JURISDICTION AND**
25 **IMPROPER VENUE, OR, IN THE**
26 **ALTERNATIVE, TO DISMISS OR**
27 **TRANSFER THE ACTION FOR**
28 **FORUM *NON-CONVENIENS***

19
20 *[Concurrently filed with Motion to*
21 *Dismiss Action for Lack of Personal*
22 *Jurisdiction and Improper Venue, or, in*
23 *the Alternative, to Dismiss or Transfer the*
24 *Action for Forum Non Conveniens]*

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DECLARATION OF LOTTI BLEUMNER

1 I, Lotti Bluemner, declare:

2 1. I am the Defendant in this action. I have personal knowledge of the
 3 matters set forth in this Declaration and, if called as a witness, I could and would testify
 4 competently as to the matters stated below.

5 2. I am making this Declaration in support of my motion to dismiss for lack
 6 of personal jurisdiction, or, alternatively, motion to dismiss or transfer the action for
 7 forum *non conveniens* (hereinafter “Motion to Dismiss.”)

8 3. I am currently a single mother to an infant daughter, and live and have lived
 9 exclusively in Los Angeles California, at all times relevant hereto. I have never
 10 conducted business in the state of New York, and am not a resident of that state.

11 4. Defendant GORDON maintains several residences, in both Los Angeles,
 12 New York, and Florida, and often travels both between various cities in the United
 13 States, including Los Angeles and New York, as well as internationally, and employs
 14 multiple personal assistants in various cities, including Los Angeles and New York to,
 15 among other things, maintain his residences while he is away, and manage his personal
 16 affairs. My job duties were performed exclusively in Los Angeles, California, although I
 17 once accompanied Plaintiff GORDON to Las Vegas, Nevada as part of my job duties as
 18 his personal assistant.

19 5. In or about the middle of the month of May, 2012, I began work for Plaintiff
 20 ERIK H. GORDON (hereinafter “Plaintiff GORDON,”) as his Los Angeles based
 21 personal assistant. At all times during the course of my employment, Plaintiff GORDON
 22 maintained a Los Angeles residence in Penthouse #4 of a condominium unit located at
 23 132 S. Maple Drive, Beverly Hills, California 92012 (hereinafter the “Los Angeles
 24 Residence.”) A true and correct representative email, in which I am introduced as
 25 Plaintiff GORDON’s “assistant in LA” is attached hereto as **Exhibit “A”** and
 26 incorporated herein by this reference as though fully set forth.

1 6. It was my primary job duty to maintain Plaintiff GORDON's Los Angeles
 2 Residence, as well as maintain and care for the vehicles Plaintiff GORDON kept there,
 3 specifically a convertible Bentley, a black Cadallac Escalade, and a green BMW, and to
 4 facilitate Plaintiff GORDON's, and his guest's, use of the vehicles and the Los Angeles
 5 Residence whenever they were in town. I also coordinated Plaintiff GORDON's Los
 6 Angeles based travel plans, and coordinated his Los Angeles social calendar, as well as
 7 coordinated his transportation in and around Los Angeles. I was trained by Travis
 8 Braha, who was Plaintiff GORDON's New York based personal assistant, and with
 9 whom I communicated with periodically as part of my job duties as Plaintiff GORDON's
 10 Los Angeles based personal assistant. Travis Braha was already employed when I began
 11 work in May, 2012, and he was introduced to me by Plaintiff GORDON as his New
 12 York personal assistant.

13 7. After I had already begun my employment as Plaintiff GORDON's personal
 14 assistant, in and around the middle of May, 2012, Plaintiff GORDON approached me
 15 with a Non-Disclosure Agreement, and demanded that I sign it. I asked him what it was,
 16 and he responded that it was "a normal" non-disclosure agreement and that it was a
 17 routine document that I needed to sign in connection with my employment. I understood
 18 Plaintiff GORDON's instructions to mean that I was required to sign the document as
 19 part of my employment as his personal assistant. I signed the document with Plaintiff
 20 GORDON present, in Los Angeles, and without being given an opportunity to read or
 21 review it beforehand.

22 8. On February 28, 2014 I filed an action in the Los Angeles Superior Court,
 23 Central District, Stanley Mosk Courthouse, Case Number BC 538111, alleging, among
 24 other things, hostile work environment, discrimination, wrongful termination in violation
 25 of public policy, intentional infliction of emotional distress, and unfair business practices
 26 in connection with my employment as Plaintiff GORDON's personal assistant, and my
 27 termination therefrom just a few weeks prior to the birth of my daughter (hereinafter
 28

1 referred to as the “California Action.” A true and correct copy of the California Action
 2 is attached hereto as **Exhibit “B,”** and incorporated herein by this reference as though
 3 fully set forth.

4 9. In connection with the California Action, and prior to filing the same, I
 5 received a right to sue letter in California.

6 10. Plaintiff GORDON and ERGO (the named Defendants in the California
 7 Action,) did not timely appear in the California Action, and their defaults were taken on
 8 April 7, 2014 and April 17, 2014, respectively.

9 11. On October 6, 2014, Plaintiffs GORDON and ERGO each filed motions for
 10 relief from default in the California Action. Plaintiffs’ motions were granted, despite my
 11 opposition thereto, on January 27, 2015, after a contested evidentiary hearing held on
 12 January 14, 2015.

13 12. Also on January 27, 2015, and in connection with the setting aside of their
 14 defaults, the court deemed Plaintiff GORDON and Plaintiff ERGO’s answers, submitted
 15 concurrently with their motion to set aside default on October 6, 2015, filed as of that
 16 date.

17 13. On February 13, 2015, I filed a motion for attorneys’ fees in the California
 18 action in connection with Plaintiff GORDON and Plaintiff ERGO’s Motions for Relief
 19 from Default, which was set for hearing on March 4, 2015. Plaintiff GORDON and
 20 Plaintiff ERGO’s opposition was due to be filed on February 26, 2015.

21 14. On February 27, 2015, Plaintiff GORDON filed a notice of removal,
 22 removing the California Action to the United States District Court for the Central
 23 District of California. A true and correct copy of Plaintiff GORDON’s Notice of
 24 Removal in the California Action is attached hereto as **Exhibit “C,”** and incorporated
 25 herein by this reference as though fully set forth.

26 15. Plaintiffs filed this instant action without notifying me of their intention to
 27 do so, despite the fact that they had already appeared in the California action, and

1 without first attempting to bring their claims in the currently pending California Action,
2 in the form of a cross-complaint.

3 16. The California Action is currently pending in the Central District of Los
4 Angeles, case number 2:15-cv-01392 (MMM)(AJWx).

5 17. I filed a Motion for Remand, on the grounds that Plaintiff GORDON's
6 Notice of Removal was untimely, on March 30, 2015, which is currently set for hearing on
7 June 15, 2015.

8 I declare under penalty of perjury of the laws of the State of California that the
9 foregoing is true and correct.

10 Executed on this 2nd day of April, 2015, at Los Angeles, California.



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13 Lotti Bluemner
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Lotti Bluemner

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Exhibit “A”

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: **Travis Ian Braha** <travisbraha@ncg.com>
Date: Wed, Jul 11, 2012 at 6:50 AM
Subject: Please meet
To: Zara Duffy <zara.duffy@gmail.com>, Lotti Bluemner <lotti10@gmail.com>

Zara and Lotti,

Please meet. Zara is Fisher's assistant and Lotti is our new assistant in LA.

Best,
Travis

Exhibit "B"

Exhibit "B"

conforming

1 Christian S. Molnar, Esq. (SBN 177665)
2 Ashley M. Hunt, Esq. (SBN 292083)
3 **CHRISTIAN S. MOLNAR LAW CORPORATION**
4 12400 Wilshire Boulevard, Suite 1180
5 Los Angeles, California 90025
6 Telephone: (310) 820-9900
7 Facsimile: (310) 820-9926
8 Email: christian@christiansmolnarlaw.com

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ORIGINAL FILED
Superior Court Of California
County Of Los Angeles

FEB 28 2014

Sherri R. Carter, Executive Officer/Clerk
By: Amber Hayes, Deputy

Attorneys for Plaintiff LOTTI BLUEMNER, an individual

**SUPERIOR COURT OF THE STATE OF CALIFORNIA,
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

LOTTI BLUEMNER, an individual,

Case No.: BC 538111

Plaintiff,

[Unlimited Jurisdiction]

vs.

ERGO MEDIA CAPITAL, LLC, a Delaware limited liability company; ERIK H. GORDON, an individual, and Does 1 through 20, inclusive.

Defendants.

**COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF AND DEMAND
FOR JURY TRIAL FOR:**

- (1) DISCRIMINATION IN VIOLATION OF FEHA (GOV. CODE §§ 12940);
- (2) AIDING AND ABETTING VIOLATIONS OF FEHA (GOV. CODE § 12940(i));
- (3) QUID PRO QUO HARASSMENT IN VIOLATION OF FEHA (GOV. CODE § 12940(j));
- (4) HOSTILE WORK ENVIRONMENT HARASSMENT IN VIOLATION OF FEHA (GOV. CODE § 12940(j));
- (5) FAILURE TO PREVENT DISCRIMINATION AND HARASSMENT IN VIOLATION OF FEHA (GOV. CODE § 12940(k));
- (6) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY (CAL CONST. Art. 1, § 8);
- (7) INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS;
- (8) NEGLIGENT INFILCTION OF

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(9) **EMOTIONAL DISTRESS, AND
UNFAIR BUSINESS PRACTICES
(CAL. BUS. PROF. CODE § 17200,
et seq.)**

4 **COMES NOW** Plaintiff LOTTI BLUEMNER, an individual (hereinafter referred to as "Plaintiff
5 BLUEMNER,") and alleges as follows:

6 **PARTIES**

7 1. Plaintiff BLUEMNER is now, and at all times mentioned herein was, an individual
8 residing and doing business in the County of Los Angeles, State of California, and was a non-exempt
9 employee of Defendants ERIK H. GORDON, an individual (hereinafter referred to as "Defendant
10 GORDON,") and ERGO MEDIA GROUP, LLC, a Delaware limited liability company (hereinafter
11 referred to as "Defendant ERGO,") (collectively "Defendants").

12 2. Plaintiff BLUEMNER is informed and believes, and based upon such information and
13 belief, herein alleges that Defendant ERGO is, and at all times herein mentioned was, a limited liability
14 company duly organized and existing under the laws of the State of Delaware, with its principal place of
15 business in the New York, and also conducting business in the County of Los Angeles, State of
16 California through the residence of its principal, Defendant GORDON, in the City of Beverly Hills,
17 County of Los Angeles, State of California, and employed and employs person in the same.

18 3. Plaintiff BLUEMNER is informed and believes, and based upon such information and
19 belief, herein alleges that at all times herein mentioned, Defendant GORDON was an officer, manger,
20 owner, member and/or principal of Defendant ERGO and at all times relevant hereto completely
21 controlled and dominated the same, and

22 4. At all times relevant hereto, Defendant GORDON maintained and, upon information and
23 belief, does now maintain, a residence in the City of Beverly Hills, County of Los Angeles, State of
24 California, and at all times relevant hereto resided in the same for significant portions of time.

25 5. Plaintiff BLUEMNER does not know the true names of Defendant Does 1 through 20,
26 inclusive, and therefore sues them by those fictitious names. Plaintiff BLUEMNER is informed and
27 believes, and on the basis of that information and belief alleges, that each of those Defendants was in
28 some manner legally responsible for the events and happenings alleged in this complaint and for Plaintiff

1 BLUEMNER's damages. The names, capacities, and relationships of Does 1 through 20 will be alleged
 2 by amendment to this complaint when they are known.

3 6. Plaintiff BLUEMNER is informed and believes and based thereon alleges that at all times
 4 mentioned herein, the Defendants, and Does 1 through 20, inclusive, and each of them, were the agents
 5 and employees of each of the remaining Defendants, and each of them, in doing the acts alleged in this
 6 complaint, were acting within the purpose and scope of said agency and employment.

7 7. Plaintiff BLUEMNER is informed and believes and based thereon alleges that there
 8 exists, and at all times herein mentioned there existed, a unity of interest and ownership between
 9 Defendant ERGO, and Does 1 through 20, inclusive, and each of them, on the one hand, and Defendant
 10 GORDON, on the other, such that any individuality and separateness between Defendant ERGO, and
 11 Does 1 through 20, inclusive, and each of them, on the one hand, and Defendant GORDON, on the
 12 other, has ceased, and thus Defendant ERGO, and Does 1 through 20, inclusive, and each of them, is the
 13 *alter ego* of Defendant GORDON, in that Defendant GORDON, completely controlled, dominated,
 14 managed, and operated the limited liability company defendant and intermingled their assets to suit the
 15 convenience of Defendant GORDON, by placing the assets of Defendant ERGO, and Does 1 through 20,
 16 inclusive, and each of them, in the name of Defendant GORDON, and vice-versa, in order to evade
 17 payment of the obligations owed to creditors, including Plaintiff BLUEMNER. Adherence to the fiction
 18 of the separate existence of Defendant ERGO, and Does 1 through 20, inclusive, and each of them, from
 19 Defendant GORDON, would permit an abuse of the limited liability company privilege and would
 20 sanction fraud and promote injustice in that they have transferred assets between themselves, without
 21 consideration, and to others, without regard to actual legal or equitable title.

22 8. Each Defendant is sued individually and as an agent, conspirator, aider and abettor,
 23 employee and/or control-person for each of the other Defendants, and the liability of each Defendant
 24 arises from the fact that it has engaged in all or part of the unlawful acts, plans, schemes, or wrongs
 25 complained of herein and was acting within the course and scope of said agency, partnership,
 26 conspiracy, and employment.

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JURISDICTION AND VENUE

2 9. The Court has personal jurisdiction over Defendants because they are residents of and/or
 3 doing business in the State of California and employed Plaintiff BLUEMNER and others in the State of
 4 California, and as such voluntarily subjected themselves to the laws of this state.

5 10. This Court has subject matter jurisdiction over all causes of action asserted herein
 6 pursuant to Article VI, § 10 of the California Constitution, California Code of Civil Procedure § 410.10,
 7 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest,
 8 exceeds TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00), and because each cause
 9 of action asserted arises under the laws of the State of California or is subject to adjudication in the
 10 courts of the State of California. No part of this complaint is preempted by federal law or challenges
 11 conduct within any federal agency's exclusive domain, and adjudication thereof has not been statutorily
 12 assigned to any other court of jurisdiction.

13 11. Venue is proper in this Court in accordance with California Code of Civil Procedure §
 14 395(a) because Defendant GORDON resides in the City of Beverly Hills, County of Los Angeles County
 15 and Defendants GORDON and ERGO conduct business in the County of Los Angeles, and employed
 16 and continues to employ persons in this state. Moreover, venue is proper pursuant to California
 17 Government Code § 12965(b), because the unlawful business practices complained of herein were
 18 committed within the County of Los Angeles and, further because, the County of Los Angeles is the
 19 county in which Plaintiff BLUEMNER would have continued to work, but for the unlawful business
 20 practices complained of herein.

21

FACTUAL ALLEGATIONS

22 12. Prior to accepting employment with Defendant ERGO, Plaintiff BLUEMNER worked as
 23 a model and also worked as an executive assistant and as a personal assistant.

24 13. In or about April, 2012, Plaintiff BLUEMNER, by the invitation of Defendant
 25 GORDON, attended a Bruce Springsteen concert with Defendant GORDON. During their evening
 26 together in April, 2012, Defendant GORDON offered to employ Plaintiff BLUEMNER as his Los
 27 Angeles based personal assistant at an annual salary of NINTY THOUSAND AND NO/100 DOLLARS
 28 (\$90,000.00), which included an annual bonus based on performance, as well as full health insurance

1 coverage, including medical, dental and vision plans. On that same evening in April, 2012, Plaintiff
 2 BLUEMNER accepted the offer of employment of Defendant GORDON. Defendant GORDON
 3 informed Plaintiff BLUEMNER on that same evening that he was dissatisfied with his current Los
 4 Angeles based personal assistant, Ms. Rain Eventoff, but that he would need a couple of weeks to
 5 transfer her to another position, and that after he accomplished the same, Plaintiff BLUEMNER could
 6 commence work for Defendant GORDON and Plaintiff BLUEMNER agreed to the same.

7 14. In or about the middle of the month of May, 2012, Plaintiff BLUEMNER commenced
 8 work for Defendant GORDON as his Los Angeles based personal assistant. In or about mid-May, 2012,
 9 when Defendant GORDON came to Los Angeles, Defendant GORDON requested Plaintiff
 10 BLUEMNER entertain his friends Trish and Rob by showing them around the Los Angeles Area
 11 because Defendant GORDON was busy. During that time, Plaintiff GORDON and several other persons
 12 decided to take a trip to Las Vegas and Defendant GORDON suggested that Plaintiff BLUEMNER
 13 attend as his "new" personal assistant.

14 15. Between May, 2012 and September, 2012, Plaintiff BLUEMNER was paid directly by
 15 Defendant GORDON via a series of wires of cash from his personal bank account.

16 16. Beginning in or about September, 2012, Plaintiff BLUEMNER began to be paid via
 17 direct deposit into her bank account from Defendant ERGO and was also enrolled into the employee
 18 health benefit, life insurance and pension fund plans of Defendant ERGO.

19 17. On or about May 26, 2012, while accompanying Defendant GORDON and others to Las
 20 Vegas, as his personal assistant, Defendant GORDON and his guests procured various narcotics and
 21 professional strippers at his hotel room. Defendant GORDON insisted that Plaintiff BLUEMNER fill
 22 the hot tub in the master suite of his hotel room and that she join Defendant GORDON, his three (3)
 23 friends and the hired stripper in the hot tub. Further, Defendant GORDON repeatedly directed Plaintiff
 24 BLUEMNER to take off her bathing suit top while in the hot tub with Defendant GORDON, his friends,
 25 and the stripper, and attempted to cajole her in to doing so by stating that "it was no big deal." Plaintiff
 26 BLUEMNER felt obligated to join her new boss, Defendant GORDON, in the hot tub and further feared
 27 she would lose her new job with him if she didn't. Plaintiff BLUEMNER did in fact get into the hot tub
 28 in her bathing suit, but declined to remove her top. Subsequently, after everyone exited the hot tub,

Defendant GORDON asked Plaintiff BLUENMER to perform a strip dance for one of his friends in the bathroom of the master suite of Defendant GORDON's hotel room. Plaintiff BLUENMER declined Defendant GORDON's request.

18. At the time of her hiring, Defendants ERGO and GORDON represented to Plaintiff BLUEMNER that her responsibilities as Defendant GORDON's Los Angeles based personal assistant would include the following:

- a. Maintaining and overseeing the upkeep and condition of Defendant GORDON's residence in Beverly Hills, California;
- b. Maintaining and overseeing the upkeep and condition of Defendant GORDON's vehicles in Los Angeles, including a Bentley, a BMW 750, and a Cadillac Escalade;
- c. Overseeing the provision of personal services to Defendant GORDON in connection with his residence in Beverly Hills, California and his vehicles which he kept in Los Angeles, including, maids, repair persons, and automotive care;
- d. Keeping his residence stocked with food, beverages, alcohol, and various other items;
- e. Assisting in the coordinating of Defendant GORDON's schedule, appointments and meetings when he was in Los Angeles;
- f. Making Defendant GORDON's residence and vehicles in Beverly Hills available for use by visiting guests, friends, family members, and invitees of Defendant GORDON;
- g. Acting as a social liaison to Defendant GORDON, introducing him to persons involved in the nightlife scene in Los Angeles and obtaining invitations and admission to various social events, parties and nightclubs with prohibitive admissions policies;
- h. Travelling with Defendant GORDON throughout the United States and internationally and acting as his personal assistant while travelling with him;
- i. To make various personal purchases for Defendant GORDON and his friends using a credit card he supplied to her in her name, and
- j. Discharging the ordinary duties of a personal assistant of Defendant GORDON in the conduct of his business;

1 19. In reality, while Plaintiff BLUEMNER's responsibilities did at times include the above-
 2 described tasks, which Plaintiff BLUEMNER at all times relevant hereto, faithfully and diligently
 3 performed, Plaintiff BLUEMNER's responsibilities also included acting as Defendant GORDON's
 4 *entre-vouz* to the Los Angeles social and nightlife scene, using her social connections and knowledge of
 5 the Los Angeles social elite to help him procure admission to various nightclubs, parties, and social
 6 events to which Defendant GORDON might not otherwise have been aware, or to which he might not
 7 otherwise have been invited. Plaintiff BLUEMNER's actual responsibilities also included
 8 accompanying Defendant GORDON and his friends and invitees to lunches and dinners at trendy
 9 restaurants, parties, bars, night clubs, and birthday parties in Los Angeles, Las Vegas, and occasionally
 10 New York City and/or Martha's Vineyard, as well as the Sundance Film Festival in Utah. Plaintiff
 11 BLUEMNER's additional responsibilities also included assisting Defendant GORDON in pursuing girls
 12 he was romantically interested in, which included taking those girls on shopping trips to purchase
 13 personal items and gifts with the credit card he provided to Plaintiff BLUEMNER. During one of these
 14 shopping trips, Plaintiff BLUEMNER, at Defendant GORDON's direction, spent tens of thousands of
 15 dollars.

16 20. When Defendant GORDON was in-town in Los Angeles, and when Plaintiff
 17 BLUEMNER accompanied him to Las Vegas, New York, the Sundance Film Festival, and/or Martha's
 18 Vineyard as part of her employment, she was "on-duty" and/or "on-call" at all times.

19 21. Additionally, after commencing employment with Defendants ERGO and GORDON,
 20 Plaintiff BLUEMNER quickly discovered that Defendant GORDON's main desire in employing
 21 Plaintiff BLUEMNER, an attractive and socially connected model, was to use her as "eye-candy" and as
 22 a "bait" to attract other attractive young women, who Defendant GORDON and his friends otherwise
 23 would not have been able attract on their own. Defendant GORDON's apparent belief in utilizing
 24 Plaintiff BLUEMNER in this manner was that if other attractive women saw that he and his friends were
 25 with an attractive woman, these other women would be more receptive to his and his friends' overtures.
 26 Essentially, Plaintiff BLUEMNER's role was to act as Defendant GORDON and his friends' "hot chick"
 27 wing-woman.

28

1 22. After Plaintiff BLUEMNER commenced work for Defendants GORDON and ERGO, she
 2 also quickly discovered that regardless of the milieu, whether in Los Angeles or elsewhere, that
 3 Defendant GORDON's *modus operandi*, consisted of trading upon his father's (one of the founders of
 4 Angelo & Gordon) wealth, fame, connections, and political capital by taking meetings during the day
 5 with his and his father's wealthy and politically connected friends, celebrities, and politicians, and then
 6 partying, drinking, and consuming various illegal drugs each night, including, but not limited to,
 7 "ecstasy" (MDMA); cocaine; marijuana; "Molly" (MDMA); and "special k" (Ketamine), prescription
 8 drugs such as oxycotin, and others, as well as regularly engaging strippers and prostitutes. Quickly after
 9 the commencement of her employment, Defendant GORDON began directing Plaintiff BLUEMNER to
 10 pick up and pay for illegal drugs (with monies he provided), and accompany him and his friends to strip
 11 clubs. On one occasion, in Las Vegas, Defendant GORDON directed Plaintiff BLUEMNER to arrange
 12 for strippers to come over to hotel rooms purchased by Defendant GORDON and to facilitate his and his
 13 friends' engagement of prostitutes at their hotel rooms. In addition, Defendant GORDON routinely
 14 insisted that Plaintiff BLUEMNER "party" with Defendant GORDON and his friends as well be present
 15 when strippers and prostitutes were present.

16 23. On many occasions while working for Defendants, Plaintiff BLUEMNER accompanied
 17 Defendant GORDON during his nights of drunken and drug-fueled debauchery and essentially "babysat"
 18 Defendant GORDON, who became so intoxicated at times during the nights and days of partying
 19 that he became susceptible to thievery and/or injury, monetarily or otherwise, by various unscrupulous
 20 persons and hangers-on who attempted to take advantage of Defendant GORDON's wealth while he was
 21 in an intoxicated, inebriated, and vulnerable state. Plaintiff BLUEMNER often felt compelled to
 22 intervene, and in did in fact intervene, on multiple occasions to prevent such persons from taking
 23 advantage, financially and otherwise, of Defendant GORDON while he was unconscious and vulnerable.

24 24. Almost immediately after she began her employment with Defendants, Plaintiff
 25 BLUEMNER was persistently subjected to unwanted flirtatious comments, references to her body parts,
 26 sexual advances, and occasional uninvited touching by Defendant GORDON. In addition, Defendant
 27 GORDON regularly insisted that Plaintiff BLUEMNER join him and his friends, as well as strippers, in
 28 various hot tubs and baths, asked her to remove her top while she was in the hot tubs and/or baths,

1 requested that she perform “strip dances” for his friends, asked her to take pictures of her naked breasts
 2 so that he could show his friends, requested massages from her, and requested, on multiple occasions,
 3 that she lay in bed with him while he was intoxicated and “high” on various illegal narcotics and
 4 prescription drugs such as oxytocin. In fact, Defendant GORDON’s lewd requests to Plaintiff
 5 BLUEMNER to send him pictures of her naked breasts increased in frequency after she became
 6 pregnant. While Plaintiff BLUEMNER declined some of these requests, she felt compelled to
 7 unwillingly comply with some of Defendant GORDON’s aforementioned appeals, out of fear that she
 8 would otherwise lose her job.

9 25. On occasion, including on his birthday on December 8, 2012, in New York, New York,
 10 Defendant GORDON insisted upon doing lines of cocaine off of Plaintiff BLUEMNER’s exposed
 11 breasts in front of multiple persons. Again, Plaintiff BLUEMNER reluctantly acquiesced to Plaintiff
 12 GORDON’s demands because she was afraid that if she didn’t do so, she would lose her job.

13 26. Further, Defendant GORDON would at times send inappropriate texts of a sexual and/or
 14 scandalous nature to Plaintiff BLUEMNER.

15 27. At all times during her employment with Defendants GORDON and ERGO, Plaintiff
 16 BLUEMNER faithfully and diligently executed her “official” responsibilities as Defendant GORDON’s
 17 assistant, and many of her “unofficial” responsibilities as well, in order to maintain her employment and
 18 her favorable salary and benefit package, including health insurance.

19 28. During the course of her employment, Defendant GORDON routinely praised Plaintiff
 20 BLUEMNER and her execution of her job duties both in writing, to her face, with others present, and to
 21 mutual friends and acquaintances of theirs. In addition, in December, 2012, after she had been working
 22 for the Defendants for over seven (7) months, Defendant GORDON rewarded her for her exceptional job
 23 performance by giving her a holiday/end-of-the-year cash bonus in the sum of EIGHT THOUSAND
 24 TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$8,250.00).

25 29. At no time between the commencement of her employment in early May, 2012, through
 26 her unlawful termination in July, 2013, did Plaintiff BLUEMNER receive any warnings or disapprovals,
 27 written or otherwise, of her job performance; nor was she ever subject to any disciplinary action of any
 28 sort.

1 30. In or about December, 2012, Plaintiff BLUEMNER became pregnant. Initially, Plaintiff
 2 BLUEMNER wasn't sure whether she would keep the baby or terminate her pregnancy, as she and the
 3 father of her baby were considering separating, and did eventually separate in March, 2013, and she was
 4 facing the challenges of being a single mother. Her main concern was her and her baby's financial
 5 security, and her ability to provide for her child. She determined that, if she was to continue with her
 6 pregnancy, she would require a larger apartment, with a second bedroom, which would necessitate an
 7 increase in her monthly rent from her current payment of ONE THOUSAND EIGHT HUNDRED AND
 8 NO/100 DOLLARS (\$1,800.00). Additionally, it was her intention, if she proceeded with the
 9 pregnancy, to take only a very brief leave of absence from her employment with Defendants, and
 10 immediately hire a nanny so she could return to her job with Defendants. Plaintiff BLUEMNER
 11 realized that she could only afford a nanny and a larger apartment if she kept her employment with
 12 Defendants GORDON and ERGO and if her position of employment as Defendant GORDON's personal
 13 assistant was secure.

14 31. In March of 2013, Plaintiff BLUEMNER, without initially disclosing her pregnancy to
 15 Defendant GORDON, met with Defendant GORDON at his residence in Beverly Hills, California for
 16 the specific purpose of discussing her long-term employment security with Defendants. During their
 17 meeting, she informed Defendant GORDON that she was thinking of leasing a larger and significantly
 18 more expensive apartment, and inquired of Defendant GORDON whether he was happy with her job
 19 performance and whether she had long-term employment security with Defendants for the foreseeable
 20 future. Defendant GORDON responded favorably, and stated to Plaintiff BLUEMNER that he was
 21 "very pleased" with her performance of her employment duties, that she was doing an "amazing job,"
 22 that her job was absolutely secure, and that he intended to continue employing her for the foreseeable
 23 future and that she had long-term employment security with the Defendants. Plaintiff BLUEMNER
 24 thanked Defendant GORDON for his reassurances and informed him of her intention to immediately
 25 lease a significantly more expensive apartment.

26 32. Reassured by Defendant GORDON's responses but wanting to have additional security,
 27 Plaintiff BLUEMNER thereafter requested that James Heckman, a mutual friend of her's and Defendant
 28 GORDON's, speak directly with Defendant GORDON while he was still in Los Angeles and pose the

same questions to him as were asked in her meeting with Defendant GORDON. The mutual friend, James Heckman, thereafter arranged to meet Defendant GORDON in Los Angeles at the Sawyer Club in or around March, 2013. During their meeting, Mr. Heckman posed the same or substantially similar questions to Defendant GORDON that Plaintiff BLUEMNER had posed to him days earlier and Defendant GORDON's responses were essentially identical; he praised Plaintiff BLUEMNER's performance and voiced his intention to continue to employ her for the foreseeable future. Thereafter, Mr. Heckman reported back to Plaintiff BLUEMNER the good news regarding her job performance and the reaffirmation of her long-term job security with the Defendants.

33. In reliance upon the affirmative representations and affirmations of Defendant GORDON to both Plaintiff BLUEMNER and their mutual friend, James Heckman, in their separate meetings with Defendant GORDON in March, 2013, Plaintiff BLUEMNER decided to commit to her pregnancy, and the financial obligations it would entail, and lease the larger and more expensive apartment in anticipation of the arrival of her child. Plaintiff BLUEMNER signed a lease for her new apartment for a one (1) year term on March 26, 2013 which term expired on March 31, 2014. The monthly base rent for her new apartment was THREE THOUSAND TWO HUNDRED FIFTY and NO/100 DOLLARS (\$3,250.00). In addition to the increased monthly base rent for the new apartment, Plaintiff BLUEMNER was required to also pay for utilities, trash, and water charges, and an increased renters insurance rate, which brought the monthly total for her new apartment to nearly FOUR THOUSAND AND NO/100 DOLLARS (\$4,000.00).

34. Shortly thereafter, at the end of March, 2013, Plaintiff BLUEMNER informed Defendant GORDON that she was pregnant. Defendant GORDON's initial reaction was that he was decidedly underwhelmed with this news, and did not respond in an overly warm or positive manner. While Defendant GORDON belatedly congratulated Plaintiff BLUEMNER on her pregnancy, almost immediately, Plaintiff BLUEMNER experienced a marked change in treatment from Defendant GORDON. He began to exclude her from events and activities that he previously always insisted that she participate in as part of her employment. For instance, whenever Defendant GORDON came to Los Angeles, Plaintiff BLUEMNER and her friends that she introduced to Defendant GORDON would be invited out to dinner with Defendant GORDON, which would almost always be followed by partying

1 and night-clubbing. Once she disclosed that she was pregnant, Defendant GORDON would invite
 2 Plaintiff BLUEMNER's friends out to dinner with him and his friends, but would not invite Plaintiff
 3 BLUEMNER. While Defendant GORDON would tell her that he would "meet up" with her later, he
 4 would invariably fail to do so. In addition, Defendant GORDON had invited Plaintiff BLUEMNER to
 5 accompany him on a long-planned trip to Las Vegas in May of 2013, to celebrate the one (1) year
 6 wedding anniversary of his and BLUEMNER's mutual friends who had been married there during
 7 Plaintiff BLUEMNER's and Defendant GORDON's first trip there together as his employee in May,
 8 2012. By contrast, now, Defendant GORDON did not take Plaintiff BLUEMNER with him to Las
 9 Vegas in May of 2013. Mutual friends, who were present on the trip, said that Defendant GORDON
 10 commented on the reasons for Plaintiff BLUEMNER's absence, reporting that Defendant GORDON
 11 stated that "Las Vegas was no place for a pregnant girl," especially, when the attendees were planning on
 12 staying up "partying for forty-eight (48) hours straight."

13 35. On or about the end of June or early July, 2013, Defendant GORDON left to travel to
 14 Iberian isle of Ibiza, a trip on which it would not have been uncommon for Plaintiff BLUEMNER to
 15 have joined his entourage as part of her regularly expected employment obligations. However, on this
 16 occasion, Defendant GORDON traveled to Ibiza without Plaintiff BLUEMNER. Again, Plaintiff
 17 BLUEMNER was informed by mutual friends that according to Defendant GORDON, he didn't want to
 18 bring a "pregnant chick" to Ibiza. By then, Plaintiff BLUEMNER, who was more than seven (7) months
 19 pregnant, and visibly showing, and therefore no longer the suitable "eye candy" that Defendant
 20 GORDON required, and instead had become a hindrance to Defendant GORDON's party lifestyle.

21 36. Beginning in May, 2013, though now largely excluded by Defendant GORDON from his
 22 social calendar and activities, Plaintiff BLUEMNER continued to faithfully perform all of her other
 23 responsibilities for Defendants. In addition, Plaintiff BLUEMNER took on the additional task of
 24 assisting Defendant GORDON in searching for a new residence in Los Angeles that he would either
 25 purchase or rent. Plaintiff BLUEMNER diligently assisted Defendant GORDON in the search for his
 26 new residence. She spent countless hours on a near daily basis searching internet listings of suitable
 27 residences and meeting with several brokers on a non-exclusive basis, as required by Defendant
 28

1 GORDON, looking at and reviewing potential properties for Defendant GORDON to either purchase or
 2 rent.

3 37. In or about late May, 2013 or early June, 2013, Defendant GORDON began pursuing a
 4 new girl, Malea. At Defendant GORDON's direction, Plaintiff BLUEMNER took her on several multi-
 5 thousand dollar shopping sprees, as well as made Defendant GORDON's Beverly Hills residence and
 6 vehicles available to her whenever she requested the same.

7 38. On or about June, 2013, Defendant GORDON, Malea, and others, departed for Ibiza
 8 where they remained until their return on or about July, 2013. Prior to their departure, Defendant
 9 GORDON and Malea informed Plaintiff BLUEMNER that upon their return, Malea would be moving
 10 into Defendant GORDON's residence in Beverly Hills, California. Defendant GORDON directed
 11 PLAINTIFF BLUEMNER to perform several tasks to prepare the residence to accommodate this
 12 change, including purchasing a storage unit for Malea. Plaintiff BLUEMNER diligently performed for
 13 Defendants all the actions Defendant GORDON requested in connection with Malea moving into his
 14 Beverly Hills residence.

15 39. Immediately after his return to the United States from his vacation in Ibiza, and on July
 16 11, 2013, Defendant GORDON sent an email to Plaintiff BLUEMNER--who at the time was six (6)
 17 weeks away from giving birth to her baby--informing her that he was terminating her, *effective*
 18 *immediately*, and that her last paycheck would be issued on Monday, July 15, 2013. Further, in this
 19 same communication, Defendant GORDON notified Plaintiff BLUEMNER that her health insurance
 20 benefits would also be terminated as of the end of that month. In his termination letter, Defendant
 21 GORDON falsely accused Plaintiff BLUEMNER of "stealing" from him by purportedly conspiring with
 22 multiple real estate agents to receive a "kick-back" on the commission payable to them in connection
 23 with his potential purchase of a new residence in Los Angeles, California if the sale was consummated.
 24 He also falsely accused her of allowing the hot water at his Beverly Hills residence to lapse for four (4)
 25 days and failing to fix the garage door opener to his residence in his Cadillac Escalade. In addition, he
 26 accused her of failing to perform minor various duties such as keeping the air-conditioning in his
 27 Beverly Hills residence at a too-warm temperature (Plaintiff BLUEMNER kept the Beverly Hills condo
 28 air conditioning thermostat at 70 degrees, as directed), and of failing to change one (1) light bulb thereat

1 prior to his latest arrival in Los Angeles. It is noteworthy that the ceilings in Defendant GORDON's
 2 condo are approximately fifteen (15) feet tall, and require a ladder to replace, which Plaintiff
 3 BLUEMNER required help in doing in her late-stage pregnancy. Further, he complained that she had
 4 driven his Escalade one one occasion without his advance permission, and thereby put additional
 5 mileage on the vehicle (despite previously giving her permission to do so, and, in fact, *requiring* her to
 6 do so as part of her employment duties in maintaining the vehicle), and failed to "re-program" the same
 7 (even though it required a professional re-programmer, who had not been retained for that purpose).
 8 Finally, Defendant GORDON falsely accused of her of buying herself personal items at the apple store
 9 with the credit card he issued to her.

10 40. None of the false allegations made by Defendant GORDON were truthful or accurate,
 11 other than: (1) that she was unable to replace one (1) light-bulb in his residence due to the physical
 12 limitations created by the advanced stage of her pregnancy, and (2) that she had on a single occasion, on
 13 a weekend day, used his Escalade without telling him in advance, although he had on numerous previous
 14 occasions told her to freely use his vehicles, had never before complained of her doing so, and had, in
 15 fact, required her to drive the same as part of her job duties to maintain, care for, and keep in good
 16 working order all of Defendant GORDON's Los Angeles vehicles.

17 41. Plaintiff BLUEMNER, while in shock at the "out-of-the-blue" termination letter, as well
 18 as it's timing - just six (6) weeks before her pregnancy delivery due date - immediately contacted the real
 19 estate agents she had been working on Defendant GORDON's behalf, and asked them to contact
 20 Defendant GORDON and inform him that she had never requested, sought, or agreed to accept any
 21 "kick-back" from any of them in connection with his potential purchase or rental of a new residence in
 22 Los Angeles, California. Each of the agents immediately confirmed that no such request had been made
 23 by Plaintiff BLUEMNER, and confirmed that no agreement regarding the same had ever been entered
 24 into, and further agreed that they would immediately contact Defendant GORDON informing him of the
 25 same.

26 42. Plaintiff BLUEMNER is informed and believes, and based on that information and belief,
 27 herein alleges, that each of the real estate agents immediately contacted Defendant GORDON and
 28 informed him that Plaintiff BLUEMNER had never requested any "kick-back" of their potential

1 from events and activities that he previously always insisted that she participate in as part
 2 of her employment;

- 3 b. Immediately upon notifying Defendant GORDON of her pregnancy, being unnecessarily
 4 restricted in performing her previous job duties of traveling with Defendant GORDON on
 5 his vacations as his personal assistant;
- 6 c. Immediately upon notifying Defendant GORDON of her pregnancy, being entirely
 7 restricting her from his “social calendar” and evening social activities, such as dinner
 8 with mutual friends;
- 9 d. Defendant GORDON’s commenting, to mutual friends, that Plaintiff BLUENMER could
 10 no longer attend such events and engagements, or travel with Defendant GORDON on
 11 vacation, because such places and events were “not places for a pregnant chick.”
- 12 e. Terminating her a mere six (6) weeks before she was to give birth, and attempting to
 13 terminate her health and medical insurance immediately, such that her medical expenses
 14 related to her pregnancy and the birth of her child would no longer be covered by
 15 Defendants;
- 16 f. Arguing that her termination was based upon dishonest interactions and “thievery”
 17 relating to a real estate transaction, which was quickly proven to be false, and also
 18 attempting to claim her termination arose out of the non-performance and/or poor
 19 performance of various trifling and negligible employment duties such as failure to
 20 replace a light bulb and allegedly not calling a plumber quickly enough.

21 48. None of the false allegations made by Defendant GORDON were accurate, nor grave
 22 enough to warrant such a dramatic swing in Defendant GORDON’s opinion of her job performance,
 23 which evidences the fact that such “reasons” were only a ruse to mask the true reason for her
 24 termination –her pregnancy.

25 49. As a proximate result of Defendants, and Does 1 through 20, inclusive, and each of their
 26 willful, knowing and intentional violations of FEHA, Plaintiff BLUENMER sustained and continues to
 27 sustain substantial losses in earnings and other benefits.

50. As a proximate result of Defendants, and Does 1 through 20, inclusive, and each of their intentional violations of FEHA, Plaintiff BLUEMNER suffered and continues to suffer humiliation, emotional distress and mental and physical pain and anguish, all to her damage in a sum according to proof.

51. Plaintiff BLUENNER is informed and believes and based thereon alleges that the aforesaid acts directed towards her were carried out with a conscious disregard of her right to be free from such illegal behavior, such as to constitute oppression, fraud or malice pursuant to California Civil Code § 3294 entitling Plaintiff BLUENNER to punitive damages in an amount appropriate to punish and set an example of Defendants, and Does 1 through 20, inclusive and each of them.

52. Plaintiff BLUEMNER has incurred and continues to incur legal expenses and attorneys' fees and costs, including expert witness fees, entitling Plaintiff BLUEMNER to relief in accordance with FEHA § 12965(b). Plaintiff BLUEMNER is presently unaware of the precise amount of these expenses and fees and prays leave of court to amend this complaint when the amounts are more fully known.

SECOND CAUSE OF ACTION

(For Aiding and Abetting Discrimination in Violation of FEHA (Gov. Code §§ 12940(i)) Against Defendants ERGO MEDIA CAPITAL, LLC, a Delaware limited liability company; ERIK H. GORDON, an individual, and Does 1 through 20, inclusive, and each of them)

53. Plaintiff BLUENNER repeats, re-pleads and re-alleges the allegations contained in paragraphs 1 through 52, inclusive, *supra*, and incorporate the same herein as if fully set forth.

54. At all applicable times mentioned in the Complaint, Defendants, and Does 1 through 20, inclusive, and each of them, regularly employed five (5) or more persons bringing Defendants, and Does 1 through 20, inclusive, and each of them, within the provisions of the California *Fair Employment and Housing Act* ("FEHA"), which proscribe certain enumerated forms of discrimination.

55. Plaintiff BLUENNER has adequately exhausted all of her administrative remedies under FEHA and obtained "right to sue" letters from the Department of Fair Employment and Housing against Defendants, and Does 1 through 20, inclusive, and each of them. A true and correct copy of the "right to sue" letter Plaintiff BLUENNER obtained from the Department of Fair Employment and Housing is attached hereto as **Exhibit "A"** and incorporated herein by reference as though fully set forth.

1 56. Defendants, and Does 1 through 20, inclusive, and each of them, was aware of, and
 2 encouraged, aided, abetted, incited, compelled, and/or coerced the unlawful employment actions set
 3 forth in the above paragraphs, as proscribed the provisions of the California *Fair Employment and*
 4 *Housing Act* (“FEHA”), Section 12940(i). Specifically, Plaintiff BLUENMER suffered adverse
 5 employment actions by and through the Defendants, and Does 1 through 20, inclusive, and by and
 6 through those encouraged or compelled by them, or tacitly and actively encouraged by them, including,
 7 but not limited to, her unlawful termination, for the sole reason of her sex, her gender, and the fact that
 8 she was pregnant.

9 57. As a proximate result of Defendants, and Does 1 through 20, inclusive, and each of their
 10 willful, knowing and intentional violations of FEHA, Plaintiff BLUENMER has sustained and continues
 11 to sustain substantial losses in earnings and other benefits.

12 58. As a proximate result of Defendants, and Does 1 through 20, inclusive, and each of their
 13 intentional violations of FEHA, Plaintiff BLUENMER has suffered and continues to suffer humiliation,
 14 emotional distress and mental and physical pain and anguish, all to her damage in a sum according to
 15 proof.

16 59. Plaintiff BLUENMER is informed and believes and based thereon alleges that the
 17 aforesaid acts directed towards her were carried out with a conscious disregard of her right to be free
 18 from such illegal behavior, such as to constitute oppression, fraud or malice pursuant to California Civil
 19 Code § 3294 entitling Plaintiff BLUENMER to punitive damages in an amount appropriate to punish
 20 and set an example of Defendants, and Does 1 through 20, inclusive and each of them.

21 60. Plaintiff BLUENMER has incurred and continues to incur legal expenses and attorneys'
 22 fees and costs, including expert witness fees, entitling Plaintiff BLUENMER to relief in accordance with
 23 FEHA § 12965(b). Plaintiff BLUENMER is presently unaware of the precise amount of these expenses
 24 and fees and prays leave of court to amend this complaint when the amounts are more fully known.

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69. Plaintiff BLUEMNER has incurred and continues to incur legal expenses and attorneys' fees and costs, including expert witness fees, entitling Plaintiff BLUEMNER to relief in accordance with FEHA § 12965(b). Plaintiff BLUEMNER is presently unaware of the precise amount of these expenses and fees and prays leave of court to amend this complaint when the amounts are more fully known.

FOURTH CAUSE OF ACTION

(For Hostile Work Environment Sexual Harassment on the basis of Sex or Gender in Violation of
FEHA (Gov. Code §§ 12940(j)) Against Defendants ERGO MEDIA CAPITAL, LLC, a Delaware
limited liability company; ERIK H. GORDON, an individual, and Does 1 through 20, inclusive,
and each of them)

70. Plaintiff BLUEMNER repeats, re-pleads and re-alleges the allegations contained in paragraphs 1 through 69, inclusive, *supra*, and incorporate the same herein as if fully set forth.

71. At all applicable times mentioned in the Complaint, Defendants, and Does 1 through 20, inclusive, and each of them, regularly employed one (1) or more persons bringing Defendants, and Does 1 through 20, inclusive, and each of them, within the provisions of the California *Fair Employment and Housing Act* ("FEHA") proscribing harassment.

72. Plaintiff BLUENNER has adequately exhausted all of her administrative remedies under FEHA and obtained "right to sue" letters from the Department of Fair Employment and Housing against Defendants, and Does 1 through 20, inclusive, and each of them. A true and correct copy of the "right to sue" letter Plaintiff BLUENNER obtained from the Department of Fair Employment and Housing is attached hereto as **Exhibit "A"** and incorporated herein by reference as though fully set forth.

73. Plaintiff BLUENNER suffered severe and pervasive sexual harassment on the basis of her sex, her gender, and on the basis of her pregnancy, in violation of FEHA during the course of her employment with Defendants such that it altered and interfered with her working conditions and created a hostile and abusive work environment and insufferable working conditions. Such sexual harassment was directed both at Plaintiff BLUENNER herself and at others in her presence, and was so severe and pervasive that permeated her workplace and substantially interfered with her working environment.

74. During the course of her employment, Defendants, and Does 1 through 20, inclusive, and each of them, took actions of a sexually harassing nature towards Plaintiff BLUEMNER and in her

1 presence which caused and continued the existence of an oppressive and hostile work environment.
 2 Specifically, Plaintiff BLUEMNER witnessed or was victim of actions or comments of a sexually
 3 harassing nature, including but not limited to:

- 4 a. Regularly requiring Plaintiff BLUEMNER, as part of her job duties as his professional
 5 assistant, to procure professional strippers and/or hookers and prostitutes for Defendant
 6 GORDON and/or his friends in hotel rooms, and to facilitate his and his friends access to
 7 prostitutes and strippers;
- 8 b. Insisting Plaintiff BLUEMNER join Defendant GORDON, his friends, and/or strippers in
 9 hot tubs or baths;
- 10 c. Requesting or directing Plaintiff BLUEMNER to remove her top in the hot tub, together
 11 with Defendant GORDON, his friends, and strippers, and attempting to cajole or pressure
 12 her into complying;
- 13 d. Requesting or directing Plaintiff BLUEMNER to perform a “strip tease” dance for
 14 Defendant GORDON’s in the bathroom of a hotel master suite;
- 15 e. Regularly requiring Plaintiff BLUEMNER, as part of her job duties as his professional
 16 assistant, to accompany him to bars, restaurants, and clubs to help him pursue women, act
 17 as “eye-candy” and as “bait” to attract other women to their party;
- 18 f. Requiring Plaintiff BLUEMNER to accompany Defendant GORDON and his friends to
 19 strip clubs;
- 20 g. Insisting that Plaintiff BLUEMNER be present and “party” with Defendant GORDON
 21 and his friends when strippers and prostitutes were present;
- 22 h. Insisting on doing lines of “Coke” off of Plaintiff BLUEMNER’s naked breasts in front
 23 of multiple persons.
- 24 i. Regularly requiring Plaintiff BLUEMNER, as part of her job duties as his professional
 25 assistant, to take the women that Defendant GORDON was romantically interested in on
 26 shopping sprees, or otherwise giving them access to Defendant GORDON’s assets,
 27 properties, amenities in Los Angeles, California;

- j. Persistently and continuously subjecting Plaintiff BLUEMNER to unwanted flirtatious comments, sexually charged advances, references to her body parts, and even unwanted touching or contact from Defendant GORDON;
- k. On occasion requesting Plaintiff BLUEMNER take photos of her naked breasts so that Defendant GORDON could show his friends. Such requests increased in frequency once Plaintiff BLUEMNER became pregnant, as did comments relating to her breasts.
- l. Requesting that Plaintiff BLUEMNER touch Defendant GORDON, or give him massages.
- m. Requesting that she lay in bed with Defendant GORDON
- n. At times sending Plaintiff BLUEMNER inappropriate, scandalous, or sexually charged text messages.

Such actions were so severe and/or pervasive so as to materially alter Plaintiff BLUENNER's work environment and render it intolerable.

75. As a proximate result of Defendants, and Does 1 through 20, inclusive, and each of their intentional violations of FEHA, Plaintiff BLUEMNER has suffered and continues to suffer humiliation, emotional distress and mental and physical pain and anguish, all to her damage in a sum according to proof.

76. Plaintiff BLUENNER is informed and believes and based thereon alleges that the aforesaid acts directed towards her were carried out with a conscious disregard of her right to be free from such illegal behavior, such as to constitute oppression, fraud or malice pursuant to California Civil Code § 3294 entitling Plaintiff BLUENNER to punitive damages in an amount appropriate to punish and set an example of Defendants, and Does 1 through 20, inclusive and each of them.

77. Plaintiff BLUEMNER has incurred and continues to incur legal expenses and attorneys' fees and costs, including expert witness fees, entitling Plaintiff BLUEMNER to relief in accordance with FEHA § 12965(b). Plaintiff BLUEMNER is presently unaware of the precise amount of these expenses and fees and prays leave of court to amend this complaint when the amounts are more fully known.

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FIFTH CAUSE OF ACTION

(For Failing to Prevent Discrimination and/or Harassment on the basis of Sex or Gender in
Violation of FEHA (Gov. Code §§ 12940(k)) Against Defendants ERGO MEDIA CAPITAL, LLC,
a Delaware limited liability company; ERIK H. GORDON, an individual, and Does 1 through 20,
inclusive, and each of them)

78. Plaintiff BLUENNER repeats, re-pleads and re-alleges the allegations contained in paragraphs 1 through 77, inclusive, *supra*, and incorporate the same herein as if fully set forth.

8 79. At all applicable times mentioned in the Complaint, Defendants, and Does 1 through 20,
9 inclusive, and each of them, regularly employed five (5) or more persons bringing Defendants, and Does
10 1 through 20, inclusive, and each of them, within the provisions of the California *Fair Employment and*
11 *Housing Act* (“FEHA”), which proscribe certain enumerated forms of discrimination and harassment.

12 80. Plaintiff BLUEMNER has adequately exhausted all of her administrative remedies under
13 FEHA and obtained "right to sue" letters from the Department of Fair Employment and Housing against
14 Defendants, and Does 1 through 20, inclusive, and each of them. A true and correct copy of the "right to
15 sue" letter Plaintiff BLUEMNER obtained from the Department of Fair Employment and Housing is
16 attached hereto as **Exhibit "A"** and incorporated herein by reference as though fully set forth.

17 81. Plaintiff BLUEMNER suffered severe and pervasive sexual harassment on the basis of
18 her sex, her gender, and on the basis of her pregnancy, in violation of FEHA during the course of her
19 employment with Defendants.

20 82. Defendants, and Does 1 through 20, inclusive, and each of them, failed to take all
21 reasonable steps necessary to prevent discrimination from happening or occurring in violation of Gov.
22 Code § 12940(k).

23 83. As a proximate result of Defendants, and Does 1 through 20, inclusive, and each of their
24 willful, knowing and intentional violations of FEHA, Plaintiff BLUENNER has sustained and continues
25 to sustain substantial losses in earnings and other benefits.

26 84. As a proximate result of Defendants, and Does 1 through 20, inclusive, and each of their
27 intentional violations of FEHA, Plaintiff BLUEMNER has suffered and continues to suffer humiliation.

emotional distress and mental and physical pain and anguish, all to her damage in a sum according to proof.

85. Plaintiff BLUENMER is informed and believes and based thereon alleges that the aforesaid acts directed towards her were carried out with a conscious disregard of her right to be free from such illegal behavior, such as to constitute oppression, fraud or malice pursuant to California Civil Code § 3294 entitling Plaintiff BLUENMER to punitive damages in an amount appropriate to punish and set an example of Defendants, and Does 1 through 20, inclusive and each of them.

86. Plaintiff BLUEMNER has incurred and continues to incur legal expenses and attorneys' fees and costs, including expert witness fees, entitling Plaintiff BLUEMNER to relief in accordance with FEHA § 12965(b). Plaintiff BLUEMNER is presently unaware of the precise amount of these expenses and fees and prays leave of court to amend this complaint when the amounts are more fully known.

SIXTH CAUSE OF ACTION

(For Wrongful Termination in Violation of Public Policy (Cal. Const., Art. 1, § 8) Against
Defendants ERGO MEDIA CAPITAL, LLC, a Delaware limited liability company; ERIK H.
GORDON, an individual, and Does 1 through 20, inclusive, and each of them)

87. Plaintiff BLUEMNER repeats, re-pleads and re-alleges the allegations contained in paragraphs 1 through 86, inclusive, above and incorporate the same herein in full.

88. At all times mentioned in this complaint, Article I, Section 8 of the California Constitution, proscribing, *inter alia*, discrimination on the basis of sex, was in full force and effect and was binding on Defendants. In addition, pursuant to the FEHA, it is against public policy and unlawful to terminate an employee because of the employee's sex and/or gender.

89. Plaintiff BLUEMNER is informed and believes and based thereon alleges that her sex and/or her gender was the motivating factor in Defendants, and Does 1 through 20, inclusive, and each of their decision to terminate her. Such discrimination is in violation of the public policy of the State of California as reflected in the California Constitution, Article I, Section 8, and additionally reflected in FEHA's proscription of the same, and has resulted in damages and injury to Plaintiff BLUEMNER as alleged herein.

90. As a proximate result of Defendants, and Does 1 through 20, inclusive, and each of their willful, knowing and intentional violations of FEHA, Plaintiff BLUENNER has sustained and continues to sustain substantial losses in earnings and other benefits.

91. As a proximate result of Defendants, and Does 1 through 20, inclusive, and each of their intentional violations of FEHA, Plaintiff BLUEMNER has suffered and continues to suffer humiliation, emotional distress and mental and physical pain and anguish, all to her damage in a sum according to proof.

92. Plaintiff BLUEMNER is informed and believes and based thereon alleges that the aforesaid acts directed towards her were carried out with a conscious disregard of her right to be free from such illegal behavior, such as to constitute oppression, fraud or malice pursuant to California Civil Code § 3294 entitling Plaintiff BLUEMNER to punitive damages in an amount appropriate to punish and set an example of Defendants, and Does 1 through 20, inclusive and each of them.

SEVENTH CAUSE OF ACTION

(For Intentional Infliction of Emotional Distress Against Defendants ERGO MEDIA CAPITAL, LLC, a Delaware limited liability company; ERIK H. GORDON, an individual, and Does 1 through 20, inclusive, and each of them)

93. Plaintiff BLUENNER repeats, re-pleads and re-alleges the allegations contained in paragraphs 1 through 92, inclusive, *supra*, and incorporate the same herein in full.

94. Defendant, and Does 1 through 20, inclusive, and each of them, persisted in subjecting Plaintiff BLUEMNER to unwelcome verbal, visual and physical conduct of a sexual nature in the workplace, as alleged hereinabove, in a manner that was outrageous, offensive, heinous and beyond the standards of decency tolerated in a civilized society.

95. Defendants, and Does 1 through 20, inclusive, and each of them intended to cause Plaintiff BLUEMNER emotional distress and/or acted with reckless disregard of Plaintiff BLUEMNER's rights, under the California Constitution and FEHA, to be free of such outrageous and unlawful conduct and with reckless disregard of the probably that Plaintiff BLUEMNER would suffer emotional distress, knowing that Plaintiff BLUEMNER was present as the victim of the conduct when it occurred.

96. As a proximate result of Defendants, and Does 1 through 20, inclusive, and each of their conduct, Plaintiff BLUENNER has suffered severe emotional distress and Defendants, and Does 1 through 20, inclusive, and each of their conduct was a substantial factor in causing Plaintiff BLUENNER's severe emotional distress.

97. As a proximate result of Defendants, and Does 1 through 20, inclusive, and each of their intentional violations of FEHA, Plaintiff BLUENNER has suffered and continues to suffer humiliation, emotional distress and mental and physical pain and anguish, all to her damage in a sum according to proof.

98. Plaintiff BLUENNER is informed and believes and based thereon alleges that the aforesaid acts directed towards her were carried out with a conscious disregard of her right to be free from such illegal behavior, such as to constitute oppression, fraud or malice pursuant to California Civil Code § 3294 entitling Plaintiff BLUENNER to punitive damages in an amount appropriate to punish and set an example of Defendants, and Does 1 through 20, inclusive and each of them.

EIGHTH CAUSE OF ACTION

(For Negligent Infliction of Emotional Distress Against Defendants ERGO MEDIA CAPITAL, LLC, a Delaware limited liability company; ERIK H. GORDON, an individual, and Does 1 through 20, inclusive, and each of them)

99. Plaintiff BLUENNER repeats, re-pleads and re-alleges the allegations contained in paragraphs 1 through 98, inclusive, *supra*, and incorporate the same herein in full.

100. Defendant, and Does 1 through 20, inclusive, and each of them, persisted in subjecting Plaintiff BLUEMNER to unwelcome verbal, visual and physical conduct of a sexual nature in the workplace, as alleged hereinabove, in a manner that was outrageous, offensive, heinous and beyond the standards of decency tolerated in a civilized society.

101. Defendants, and Does 1 through 20, inclusive, breached a duty to Plaintiff BLUEMNER to, as her employer, refrain from such conduct and protect her from being subjected to the same while in their employ. Defendants, and Does 1 through 20, inclusive, and each of them, acted intentionally or without regard to a reasonably knowable risk of harm to Plaintiff BLUEMNER and her rights, the California Constitution and FEHA, to be free of such harm.

102. As a proximate result of Defendants, and Does 1 through 20, inclusive, and each of their
 2 conduct, Plaintiff BLUEMNER has suffered severe emotional distress and Defendants, and Does 1
 3 through 20, inclusive, and each of their conduct was a substantial factor in causing Plaintiff
 4 BLUEMNER's severe emotional distress.

103. As a proximate result of Defendants, and Does 1 through 20, inclusive, and each of their
 6 intentional violations of FEHA, Plaintiff BLUEMNER has suffered and continues to suffer humiliation,
 7 emotional distress and mental and physical pain and anguish, all to her damage in a sum according to
 8 proof.

NINTH CAUSE OF ACTION

(For Unfair Business Practices (Cal. Bus. Prof. Code §§ 17200, *et seq.*) Against Defendants ERGO MEDIA CAPITAL, LLC, a Delaware limited liability company; ERIK H. GORDON, an individual, and Does 1 through 20, inclusive, and each of them)

104. Plaintiff BLUEMNER repeats, re-pleads and re-alleges the allegations contained in
 14 paragraphs 1 through 103, inclusive, *supra*, and incorporate the same herein in full.

105. Plaintiff BLUEMNER brings this action to recover unpaid wages, on behalf of herself, all
 16 other similarly situated, and the general public.

106. The Unfair Competition Law, Business and Professions Code Section 17200 *et seq.*,
 18 defines unfair competition to include any "unfair," "unlawful" or "deceptive" business practice, and
 19 provides for injunctive and restitutionary relief for violations.

107. Defendants, and Does 1 through 20, inclusive, and each of them, have committed
 21 numerous unfair, unlawful or deception business practices as further alleged hereinabove, including but
 22 not limited to: terminating Plaintiff BLUEMNER for an unlawful and discriminatory purpose,
 23 wrongfully terminating Plaintiff in contravention of public policy, aiding and abetting in the unlawful
 24 discharge of Plaintiff, subjecting Plaintiff to a hostile and oppressive working environment by exposing
 25 Plaintiff to inappropriate and sexual comments and actions which pervaded her working conditions,
 26 requiring, either expressly or impliedly, Plaintiff to engage or participate in acts of a sexual nature as a
 27 condition of her continued employment, failing to prevent sexual harassment, engaging in or allowing to

1 exist the intentional infliction of emotional distress on Plaintiff BLUENMER, and in engaging in or
 2 allowing to exist the negligent infliction of emotional distress on Plaintiff BLUENMER.

3 108. The actions of Defendants, and Does 1 through 20, inclusive, and each of them, detailed
 4 herein against Plaintiff BLUENMER constitute unfair, unlawful and deceptive business practices, and
 5 further, constitute actions for which restitutionary relief is available.

6 109. As a proximate result of Defendants, and Does 1 through 20, inclusive, and each of their
 7 actions, Plaintiff BLUENMER has suffered injury in fact and lost money or property.

8 110. Plaintiff BLUENMER is informed and believes and based thereon alleges that
 9 Defendants, and Does 1 through 20, inclusive, and each of them, continue to engage in the practices
 10 described herein and are continuing and will continue to benefit financially from these unlawful and
 11 unfair practices unless enjoined by this Court from doing so.

12 111. Plaintiff BLUENMER is informed, believes, and based thereon alleges, that the unlawful
 13 and unfair business practices conducted by Defendants, and Does 1 through 20, inclusive, and each of
 14 them, are ongoing and present a threat and likelihood of continuing discrimination against Plaintiff
 15 BLUENMER and other members of the general public. Accordingly, Plaintiff BLUENMER seeks
 16 declaratory and injunctive relief and restitution, as permitted under the Act.

17 112. As a proximate result of Defendants, and Does 1 through 20, inclusive, and each of their
 18 unfair business practices, Plaintiff BLUENMER has sustained and continues to sustain substantial losses
 19 in earnings and other benefits.

20 113. Plaintiff BLUENMER has incurred and continues to incur legal expenses and attorneys'
 21 fees and costs, including expert witness fees, entitling Plaintiff BLUENMER to relief in accordance with
 22 California Code of Civil Procedure § 1021.5. Plaintiff BLUENMER is presently unaware of the precise
 23 amount of these expenses and fees and prays leave of court to amend this complaint when the amounts
 24 are more fully known.

25 **PRAYER FOR RELIEF**

26 **WHEREFORE**, Plaintiff BLUENMER prays for judgment against Defendants, and Does 1
 27 through 20, inclusive, and each of them as follows:

1. At all applicable times mentioned in the Complaint, Defendants, and Does 1 through 20, inclusive, and each of them, regularly employed five (5) or more persons bringing Defendants, and Does 1 through 20, inclusive, and each of them, within the provisions of the California *Fair Employment and Housing Act* ("FEHA"), which proscribe certain enumerated forms of discrimination.

2. At all applicable times mentioned in the Complaint, Defendants, and Does 1 through 20, inclusive, and each of them, regularly employed one (1) or more persons bringing Defendants, and Does 1 through 20, inclusive, and each of them, within the provisions of the California *Fair Employment and Housing Act* ("FEHA") proscribing specific types of harassment.

As to the First through Third Causes of Action

1. For restitution of all monies due Plaintiff BLUEMNER including back pay, front pay, lost employment benefits and other compensation, and other special damages according to proof;

2. For general damages to compensate Plaintiff BLUEMNER for her past, present, and future emotional distress, pain and suffering, and loss of pleasure and enjoyment of life;

3. For exemplary and punitive damages;

4. For all applicable injunctive relief as allowed by law;

5. For an award of interest, including prejudgment interest, at the legal rate;

6. For an award of attorneys' fees;

7. For costs of suit incurred, and

8. For such other and further relief as the Court may deem appropriate.

As to the Fourth Cause of Action

1. For general damages to compensate Plaintiff BLUEMNER for her past, present, and future emotional distress, pain and suffering, and loss of pleasure and enjoyment of life;

2. For exemplary and punitive damages;

3. For all applicable injunctive relief as allowed by law;

4. For an award of interest, including prejudgment interest, at the legal rate;

5. For an award of attorneys' fees;

6. For costs of suit incurred, and

7. For such other and further relief as the Court may deem appropriate.

As to the Fifth Cause of Action

1. For restitution of all monies due Plaintiff BLUENNER including back pay, front pay, lost employment benefits and other compensation, and other special damages according to proof;
2. For general damages to compensate Plaintiff BLUENNER for her past, present, and future emotional distress, pain and suffering, and loss of pleasure and enjoyment of life;
3. For exemplary and punitive damages;
4. For all applicable injunctive relief as allowed by law;
5. For an award of interest, including prejudgment interest, at the legal rate;
6. For an award of attorneys' fees;
7. For costs of suit incurred, and
8. For such other and further relief as the Court may deem appropriate.

As to the Sixth Cause of Action

1. For restitution of all monies due Plaintiff BLUENNER including back pay, front pay, lost employment benefits and other compensation, and other special damages according to proof;
2. For general damages to compensate Plaintiff BLUENNER for her past, present, and future emotional distress, pain and suffering, and loss of pleasure and enjoyment of life;
3. For exemplary and punitive damages;
4. For all applicable injunctive relief as allowed by law;
5. For an award of interest, including prejudgment interest, at the legal rate; and
6. For such other and further relief as the Court may deem appropriate.

As to the Seventh Cause of Action

1. For general damages to compensate Plaintiff BLUEMNER for her past, present, and future emotional distress, pain and suffering, and loss of pleasure and enjoyment of life;
2. For exemplary and punitive damages;
3. For all applicable injunctive relief as allowed by law;
4. For an award of interest, including prejudgment interest, at the legal rate; and
5. For such other and further relief as the Court may deem appropriate.

111

As to the Eighth Cause of Action

1. For general damages to compensate Plaintiff BLUEMNER for her past, present, and future emotional distress, pain and suffering, and loss of pleasure and enjoyment of life;
2. For all applicable injunctive relief as allowed by law;
3. For an award of interest, including prejudgment interest, at the legal rate; and
4. For such other and further relief as the Court may deem appropriate.

As to the Ninth Cause of Action

1. For an order finding that Defendants, and Does 1 through 20, inclusive, and each of them, violated California's Unfair Competition Law, Business and Professions Code sections 17200, *et seq.*;
2. For an award to Plaintiff BLUEMNER of all actual, consequential, and incidental damages subject to proof at trial, including but not limited to the amount of wages illegally withheld, all damages for wages not promptly paid, penalties pursuant to statute, and all premium pay, civil penalties, and other penalties owed to Plaintiff BLUEMNER;
3. For an award to Plaintiff BLUEMNER of interest on all monies owed from the day such money was due to Plaintiff BLUEMNER;
4. For an order requiring Defendants to pay restitution to Plaintiff BLUEMNER due to Defendants unlawful and/or unfair activities pursuant to Business and Professions Code sections 17200, *et seq.*;
5. For permanent injunctive relief requiring the Defendants to cease and desist from all unlawful and/or unfair activities pursuant to Business and Professions Code sections 17200, *et seq.*,
6. For an award of attorneys' fees;
7. For costs of suit incurred, and
8. For such other relief as this Court may deem proper.

Dated: February 28, 2014

Christian S. Molnar Law Corporation

Christian S. Molnar, Esq., attorneys for Plaintiff LOTTI BLUENMER

REQUEST FOR JURY TRIAL

Plaintiff hereby demands trial by jury.

Dated: February 28, 2014

Christian S. Molnar Law Corporation

Christian S. Molnar, Esq., attorneys for Plaintiff LOTTI BLUEMNER

Exhibit “A”



STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 | Videophone 916-226-5285 | TTY 800-700-2320
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

GOVERNOR EDMUND G. BROWN JR.
DIRECTOR PHYLLIS W. CHENG

Sep 26, 2013

Lotti Bluemner
9663 Santa Monica Boulevard, #162
Beverly Hills, CA 90210

RE: Notice of Case Closure and Right to Sue

DFEH Matter Number: 166125-69796

Right to Sue: Bluemner / Ergo Media Capital, LLC, Erik Gordon

Dear Lotti Bluemner:

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective Sep 26, 2013 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing

Enclosures

cc: Ergo Media Capital, LLC Gordon

Exhibit “C”

1 Jason S. Mills (Bar No. 225126)
2 Teri E. Kirkwood (Bar No. 128241)
3 MORGAN, LEWIS & BOCKIUS LLP
4 300 South Grand Avenue
5 Twenty-Second Floor
6 Los Angeles, CA 90071-3132
7 Tel: 213.612.2500 / Fax: 213.612.2501
8 *tkirkwood@morganlewis.com*

9 Attorneys for Defendants
10 ERGO MEDIA CAPITAL, LLC and
11 ERIK H. GORDON

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LOTTI BLUEMNER, an individual,
Plaintiff,
vs.
ERGO MEDIA CAPITAL, LLC, a
Delaware limited liability company;
ERIK H. GORDON, an individual, and
DOES 1 through 20, inclusive,
Defendants.

Case No. 2:15-CV-1392

**DEFENDANT ERIK H.
GORDON'S NOTICE OF
REMOVAL OF ACTION TO
THE UNITED STATES
DISTRICT COURT FOR THE
CENTRAL DISTRICT OF
CALIFORNIA**

[28 U.S.C. §§ 1332, 1441, and 1446]

[Filed Concurrently With
Declaration of Erik H. Gordon]

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1 **TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL
2 DISTRICT OF CALIFORNIA AND TO PLAINTIFF AND HER
3 ATTORNEYS OF RECORD:**

4 **PLEASE TAKE NOTICE** that Defendant Erik H. Gordon (“Gordon” or
5 “Defendant”), by and through his counsel, hereby removes the above-entitled action
6 from the Superior Court of California for the County of Los Angeles, to the United
7 States District Court for the Central District of California pursuant to 28 U.S.C. §§
8 1332, 1441, and 1446. This Court has original subject matter jurisdiction over
9 Plaintiff Lotti Bluemner’s lawsuit under 28 U.S.C. § 1332(a) because complete
10 diversity exists (Plaintiff is a California citizen, while each Defendant is not a
11 California citizen), and the amount in controversy is alleged to exceed \$75,000.

12 **I. SUMMARY OF COMPLAINT**

13 1. On February 28, 2014, Plaintiff filed a civil action in the Superior
14 Court of the State of California for the County of Los Angeles, entitled *Lotti*
15 *Bluemner v. ErGo Media Capital, LLC, a Delaware limited liability company; Erik*
16 *H. Gordon, an individual, and Does 1 through 20, inclusive*, Case Number
17 BC538111 (“Complaint”).

18 2. The Demand For Jury Trial; Summons; Complaint; Civil Case Cover
19 Sheet; Civil Case Cover Sheet Addendum and Statement of Location; Notice of
20 Case Assignment; and Voluntary Efficient Litigation Stipulations were served upon
21 National Registered Agents, Inc., the agent for service of process for Defendant
22 ErGo Media Capital, LLC, in Dover, Delaware on March 5, 2014. On March 5,
23 2014, the agent for service of process forwarded the documents to Brent Cox, Esq.
24 of the Sloss Law Firm in New York on behalf of ErGo Media.¹

25 ¹ For reasons set forth in Defendant ErGo Media’s successful Motion for
26 Mandatory Relief From Default Based on an Attorney Affidavit of Fault,
27 Defendant ErGo Media never received these papers that were forwarded to the
Sloss Law Firm in New York.

1 3. The Summons; Complaint; Civil Case Cover Sheet; Civil Case Cover
2 Sheet Addendum and Statement of Location; Notice of Case Assignment; and
3 Voluntary Efficient Litigation Stipulations were invalidly served by substitute
4 service upon Defendant Erik H. Gordon, an Individual, on March 7, 2014 in
5 Beverly Hills, California. Defendant Gordon maintains that at that time and on that
6 date he did not live at the Beverly Hills, California address where substitute service
7 was allegedly made and denies being served with the summons and complaint.²

8 4. The Demand For Jury Trial; Summons; Complaint; Civil Case Cover
9 Sheet; Civil Case Cover Sheet Addendum and Statement of Location which
10 Defendants obtained from the Superior Court file in this case are attached hereto as
11 Exhibit A.³

12 5. The Proof of Service of Summons on Erik Gordon that Plaintiff filed
13 in the superior court on March 11, 2014 is attached hereto as Exhibit B.⁴

14 6. Default was entered against ErGo Media Capital, LLC on April 7,
15 2014. (A true and correct copy obtained from the superior court file of the Proof of
16 Service of Summons and Complaint on ErGo Media is attached hereto as Exhibit
17 C and of the Request for Entry of Default as to ErGo Media is attached hereto as
18 Exhibit D.)

19 7. On April 15, 2014, the Clerk in the Superior Court issued a Notice of
20 Case Management Conference to the Plaintiff setting the Case Management
21

22 ² For the reasons set forth in Defendant Gordon's successful motion for relief from
23 default, Defendant Gordon has never received this packet of pleadings that was
24 invalidly served at that Beverly Hills, California address.

25 ³ Defendants obtained a copy of the summons and complaint from the superior
26 court file in September 2014 when they became aware that this action had been
27 filed and ostensibly served.

28 ⁴ Again, Defendant Gordon was never validly served with service of process in this
matter.

1 Conference for June 25, 2014. (A true and correct copy of the Clerk's Notice of
2 Case Management Conference obtained from the superior court file is attached
3 hereto as Exhibit E.)

4 8. Default was entered against Erik H. Gordon on April 17, 2014. (A true
5 and correct copy of the Request for Entry of Default as to Erik Gordon is attached
6 hereto as Exhibit F).⁵

7 9. No default judgment was ever entered against either Defendant Erik
8 Gordon or ErGo Media.

9 10. On or about May 1, 2014, Plaintiff served Notice of Intent to Seek
10 Punitive Damages in the amount of Ten Million (\$10,000,000.00) against
11 Defendant Gordon and Defendant ErGo Media Capital. A true and correct copy of
12 the Notice of Intent to Seek Punitive Damages Defendants obtained from the
13 Superior Court is attached as Exhibit G.⁶

14 11. On or about May 16, 2014, Plaintiff served a Notice of Case
15 Management Conference Hearing for the June 25, 2014 case management
16 conference.⁷ A true and correct copy of the Notice filed in Superior Court on May
17 19, 2014 is attached hereto as Exhibit H.

18 12. On June or about June 6, 2014, Plaintiff filed a Case Management
19

20 ⁵ Defendants were never served with a Notice of Entry of Default and no such
21 notice is contained in the Superior Court file.

22 ⁶ Defendant ErGo Media Capital never received this notice from the Sloss Law
23 Firm and Defendant Gordon was never validly served with this Notice as set forth
above.

24 ⁷ As with the previous documents ostensibly served up to this point in this case,
25 neither defendant received this document. As noted above, Defendant Gordon was
26 never served because he did not live at the service address. The Sloss Law Firm
27 did not forward this notice to Defendant ErGo Media as established in the motion
for relief from default. Defendant obtained this copy from the superior court file in
this matter.

28

1 Statement in superior court, but did not serve it on any Defendant. (A true and
2 correct copy of the Statement obtained from the superior court file is attached
3 hereto as Exhibit I.)

4 13. At the Case Management Conference on June 25, 2014, the Court
5 ordered the Plaintiff to file the default prove-up documents by July 31, 2014 and set
6 the matter for an Order to Show Cause re: default for August 25, 2014. Notice was
7 deemed waived. (A true and correct copy of the Court's Minute Order that
8 Defendant obtained from the superior court file is attached hereto as Exhibit J.)

9 14. On August 25, 2014, the Court continued the Order to Show Cause Re:
10 Default to September 22, 2014 and further ordered that the default prove-up
11 documents be submitted by September 10, 2014. Plaintiff was ordered to give
12 notice. (A true and correct copy of the Court's Minute Order that Defendant
13 obtained from the superior court file is attached hereto as Exhibit K.)

14 15. On or about August 26, 2014, Plaintiff served a "NOTICE OF
15 RULING AT ORDER TO SHOW CAUSE HEARING RE: FAILURE TO FILE
16 DEFAULT JUDGEMENT [sic] PACKAGE." (A true and correct copy of the
17 Notice of Ruling contained in the Superior Court file is attached hereto as Exhibit
18 L.)

19 16. On August 29, 2014, Plaintiff filed a Proof of Service with the superior
20 court regarding service of the Statement of Damages on Defendant ErGo Media,
21 ostensibly on August 13, 2014. (A true and correct copy of the "Proof of Service of
22 Summons" for the Statement of Damages that Defendant obtained from the
23 Superior Court file is attached hereto as Exhibit M.)

24 17. On or about September 2, 2014, Plaintiff's Statement of Damages was
25 received by mail by Defendant ErGo Media's agent for service of process, National
26 Registered Agents, Inc., who forwarded the document to ErGo Media Capital in
27

28

MORGAN, LEWIS &
BOCKIUS LLP
ATTORNEYS AT LAW
LOS ANGELES

1 New York, New York.⁸ Plaintiff's Statement of Damages in which she claims
2 Special Damages in the amount of \$376,730.00, general damages in the amount of
3 \$3,000,000.00 and punitive damages in the amount of \$10,000,000.00 establishes
4 that the amount in controversy in this matter exceeds \$75,000. A true and correct
5 copy of Plaintiff's Statement of Damages is attached as Exhibit N. (Declaration of
6 Erik H. Gordon In Support of the Notice of Removal of Defendant Erik H. Gordon
7 (hereinafter "Gordon Decl." ¶s 3, 6, 7; Exhibit N.)

8 18. On September 10, 2014, in the Superior Court Plaintiff filed a
9 Statement of Damages, dated August 5, 2015, directed to Defendant Erik Gordon.
10 A true and correct copy of this Statement of Damages Defendant obtained from the
11 Superior Court file is attached hereto as Exhibit O.⁹

12 19. Also on September 10, 2014, Plaintiff filed in the Superior Court a
13 second Request for Entry of Default as to Defendant Erik Gordon, dated September
14 8, 2014. The copy Defendant obtained from the Superior Court file shows that
15 default was entered pursuant to this request on September 10, 2014. (A true and
16 correct copy of the 9-10-14 Request to Enter Default of Erik Gordon that Defendant
17 obtained from the court file is attached hereto as Exhibit P.)

18 20. On September 11, 2014, in the Superior Court Plaintiff filed a
19 Statement of Damages, dated August 5, 2015, directed to Defendant ErGo Media
20 Capital, LLC. A true and correct copy of this Statement of Damages Defendant
21 obtained from the Superior Court file is attached hereto as Exhibit Q.

22 21. On September 11, 2014, Plaintiff also filed a second Request for Entry

23
24 ⁸ ErGo Media had submitted a change of address in July 2014 and this notice
25 forwarded by National Registered Agents was the first pleading ErGo actually
received in this matter. (Gordon Decl.)

26 ⁹ Defendant Gordon never received this Statement of Damages, which was
27 ostensibly served by personal service at the Beverly Hills address where he did not
live at that time.

28

1 of Default as to ErGo Media, dated September 8, 2014. The copy Defendant
2 obtained from the Superior Court file shows that default was NOT entered as
3 requested because default had previously been entered on April 7, 2014. Attached
4 to this rejected request was a Notice of Rejection Default/Clerk's Judgment. (A true
5 and correct copy of the 9-11-14 rejected Request to Enter Default of ErGo Media
6 and the attached Notice of Rejection that Defendant obtained from the court file is
7 attached hereto as Exhibit R.)

8 22. On September 22, 2014, the Order to Show Cause Re: Default was
9 called for hearing, counsel for Plaintiff being the only one appearing. The matter
10 was continued to November 7, 2014 and notice was deemed waived. (A true and
11 correct copy of the Court's Minute Order that Defendant obtained from the superior
12 court file is attached hereto as Exhibit S.)

13 23. On October 6, 2014, Defendant Erik H. Gordon filed a Motion for
14 Relief from Default set to be heard on November 7, 2014, on the grounds that
15 Defendant Gordon was never served with the Summons and Complaint in this
16 matter. (Exhibits T through W, attached.)¹⁰

17 24. On October 6, 2014, Defendant ErGo Media Capital, LLC also filed a
18 Motion for Mandatory Relief from Default set to be heard on November 7, 2014,
19 based on an attorney affidavit of fault on the basis that ErGo Media never received
20 actual notice of this action in time to respond to the complaint. (Exhibits X
21
22
23
24

25 ¹⁰ Defendant's motion included the following: (i) Notice of Motion and Motion for
26 Relief From Default (Exhibit T); (ii) Declaration of Erik H. Gordon in Support
27 (Exhibit U); (iii) Declaration of Teri E. Kirkwood in Support (Exhibit V); and
28 (iv) Defendant Erik H. Gordon's [Proposed] Answer to Plaintiff's Unverified
Complaint (Exhibit W).

1 through BB, attached.)¹¹

2 25. On October 27, 2014, Plaintiff served her “OMNIBUS OPPOSITION
 3 OF PLAINTIFF LOTTI BLUEMNER TO DEFENDANT ERGO MEDIA
 4 CAPITAL LLC’S MOTION FOR MANDATORY RELIEF FROM DEFAULT
 5 AND DEFENDANT ERIK H. GORDON’S MOTION FOR RELIEF FROM
 6 DEFAULT; DECLARATION OF LOTTI BLUEMNER AND ASHLEY M.
 7 HUNT, ESQ., IN SUPPORT THEREOF.” (A true and correct copy of Plaintiff’s
 8 Opposition served on Defendants is attached hereto as Exhibit CC.)

9 26. On October 31, 2014, Defendants filed and served the Reply by
 10 Defendants ErGo Media Capital, LLC to Plaintiff’s Omnibus Opposition to
 11 Motions for Relief From Default. (A true and correct copy of Defendants’ Reply is
 12 attached hereto as Exhibit DD.)

13 27. Also on October 31, 2014, Defendants filed Objections by Defendants
 14 to Evidence Submitted By Plaintiff In Opposition to Defendants’ Motions for
 15 Relief From Default. (A true and correct copy of Defendants’ Objections is attached
 16 hereto as Exhibit EE.)

17 28. On November 7, 2014, the Order to Show Cause Re: Default, as well
 18 as both Defendants’ Motions for Relief from Default were called for hearing. The
 19 Court issued a tentative ruling to grant both motions for relief from default.
 20 Plaintiff requested an evidentiary hearing to present additional evidence and
 21 testimony in opposition to both motions for relief from default, which evidentiary
 22 hearing was scheduled for January 14, 2015. (A true and correct copy of the Court’s

23 ¹¹ Defendant ErGo’s Motion included the following: (i) Notice of Motion and
 24 Motion for Mandatory Relief from Default (Exhibit X); (ii) Attorney Declaration
 25 of Fault by Jacqueline Eckhouse, Esq. (Exhibit Y); (iii) Declaration of Erik H.
 26 Gordon In Support of Motion for Mandatory Relief (Exhibit Z); (iv) Declaration
 27 of Teri E. Kirkwood In Support of Motion for Mandatory Relief from Default
 28 (Exhibit AA); and (v) Defendant ErGo Media Capital, LLC’s [Proposed] Answer
 to Plaintiff’s Unverified Complaint (Exhibit BB).

1 Minute Order that Defendant obtained from the Court file is attached hereto as
2 Exhibit FF.)

3 29. A true and correct copy of the Reporter's Transcript of Proceedings on
4 Friday November 7, 2014, that Defendants received from the court reporter, is
5 attached hereto as Exhibit GG.

6 30. On December 12, 2014, pursuant to the Clerk's Application to Vacate
7 and Order dated September 25, 2014, the Court issued an Order vacating the
8 (second) Default of Erik H. Gordon that had been entered on September 10, 2014.
9 The Clerk requested the vacation of the default because the default was previously
10 entered on April 17, 2014. (A true and correct copy of the Clerk's Application and
11 the Order vacating the second default of Erik Gordon that Defendant obtained from
12 the Court file is attached hereto as Exhibit HH.)

13 31. On January 13, 2014, the day before the evidentiary hearing on
14 Defendants' motions for relief from default, Plaintiff served "PLAINTIFF LOTTI
15 BLUEMNER'S REQUEST FOR WRITTEN STATEMENT OF DECISION
16 AFTER CONTESTED EVIDENTIARY HEARING ON DEFENDANT ERIK H.
17 GORDON'S AND DEFENDANT ERGO MEDIA CAPITAL'S MOTIONS FOR
18 RELIEF FROM DEFAULT." (A true and correct copy of the Request for Written
19 Statement served on Defendants is attached hereto as Exhibit II)

20 32. On January 14, 2015, the court held the contested evidentiary hearing
21 on Defendants' motions. Plaintiff's Counsel, Ashley Hunt was sworn in and
22 testified for the Plaintiff and Plaintiff was sworn and testified on her own behalf.
23 Plaintiff's exhibits were marked for identification, but no copies were provided to
24 the Court Clerk and were not tagged. Plaintiff's exhibits were not admitted into
25 evidence. After the evidentiary hearing on Defendants' respective Motions for
26 Relief from Default, the matter was deemed submitted to the Court and notice was
27 waived. (A true and correct copy of the Court's Minute Order Defendants obtained

1 from the Court file is attached hereto as Exhibit JJ.)

2 33. On the afternoon of January 14, 2014, *after* the evidentiary hearing had
3 concluded, Plaintiff served on Defendants "DECLARATION OF ASHLEY M.
4 HUNT, ESQ., REGARDING THE AUTHENTICITY OF BUSINESS RECORDS
5 PRODUCED IN RESPONSE TO SUBPOENAS *DUCES TECUM* [sic]"¹² (A true
6 and correct copy of the Declaration of Ashley Hunt served on Defendants is
7 attached hereto as Exhibit KK. A true and correct copy of the Proof of Service by
8 mail as to the Declaration of Ashley M. Hunt, Esq. is attached hereto as Exhibit
9 LL.)

10 34. A true and correct copy of the Reporter's Transcript of Proceedings on
11 January 14, 2015, that Defendants received from the court reporter, is attached
12 hereto as Exhibit MM.

13 35. On January 27, 2015, the Superior Court issued its ruling granting both
14 Defendants' respective motions for relief from default. The Court issued an order
15 vacating the default as to ErGo Media and Erik H. Gordon, individually. The Court
16 further ordered that the Answers to the Complaint by Defendants ErGo Media and
17 Erik Gordon, which had been submitted to the Court with the respective Motions
18 for Relief from Default, were deemed filed as of January 27, 2015. The clerk
19 mailed notice to Defendants, which notice was received February 2, 2015. A true
20 and correct copy of the Minute Order attaching the Ruling and Order vacating the
21 defaults of Defendants ErGo Media and Erik Gordon and deeming the answers filed
22 as of January 27, 2015 is attached hereto as Exhibit NN.

23 36. A true and correct copy of the Notice of Ruling On Defendants ErGo
24

25 ¹² Ms. Hunt had attempted to testify at the evidentiary hearing regarding documents
26 Plaintiff apparently hoped would be introduced into evidence. However the court
27 sustained Defendants' hearsay objections on the grounds that none of the
documents were authenticated and Ms. Hunt was not competent to authenticate
any of the documents presented.

1 Media Capital, LLC's and Erik Gordon's Motions for Relief From Default and
2 Notice of Case Management Conference served and filed by Defendants is attached
3 hereto as Exhibit OO.

4 37. A true and correct copy of the Answer by Defendant Erik Gordon
5 deemed filed on January 27, 2015 is attached hereto as Exhibit W. A true and
6 correct copy of the Answer by Defendant Ergo Media deemed filed on January 27,
7 2015 is attached hereto as Exhibit BB.

8 38. As part of the Order issued by the Court, the parties were to meet and
9 confer concerning Plaintiff's anticipated motion for attorneys' fees. A true and
10 correct copy of the Notice of Agreed Upon Briefing Schedule for Plaintiff's Motion
11 for Attorneys' Fees On Granting of Defendants ErGo Media Capital, LLC's and
12 Erik Gordon's Motions for Relief From Default, which Defendants filed in Superior
13 Court on February 9, 2015, is attached hereto as Exhibit PP.

14 39. The Notice of Motion and Motion of Plaintiff Bluemner for An Order
15 Granting Attorneys' Fees and Costs Pursuant to California Code of Civil Procedure
16 Section 437(b), and Declaration of Christian S. Molnar in Support Thereof, that
17 Plaintiffs served on Defendants, is attached hereto as Exhibit QQ.

18 40. The Notice of Posting Jury Fees of Plaintiff Lotti Bluemner that
19 Plaintiff served by mail on Defendants on February 19, 2015, is attached hereto as
20 Exhibit RR.

21 41. The Plaintiff's Case Management Statement served by Plaintiff on
22 Defendants by mail on February 19, 2015, is attached hereto as Exhibit SS.

23 42. The Declaration of Erik Gordon (hereafter "Gordon Decl.") in support
24 of Defendant's removal is concurrently filed herewith.

25 43. Plaintiff's Complaint seeks to recover compensatory damages,
26 emotional distress damages, punitive and exemplary damages, attorneys' fees and
27 costs, costs of suit incurred, injunctive relief, interest, and "such other and further

1 relief as the Court may deem appropriate" based on the following causes of action:
2 (1) unlawful discharge/discrimination in violation of the California Fair
3 Employment and Housing Act ("FEHA") (Gov. Code section 12940(a)) against
4 both Defendants; (2) for aiding and abetting discrimination in violation of FEHA
5 (Gov. Code section 12940(i)) against both Defendants; (3) for quid pro quo sexual
6 harassment on the basis of sex or gender in violation of FEHA (Gov. Code section
7 12940(j)) against both Defendants; (4) for hostile work environment sexual
8 harassment on the basis of sex or gender in violation of FEHA (Gov. Code section
9 12940(j)) against both Defendants; (5) for failing to prevent discrimination and/or
10 harassment on the basis of sex or gender in violation of FEHA (Gov. Code section
11 12940(k)) against both Defendants; (6) for wrongful termination in violation of
12 public policy (Cal. Const., Art.1, §8) against both Defendants; (7) for intentional
13 infliction of emotional distress against both Defendants; (8) for negligent infliction
14 of emotional distress against both Defendants; and (9) for unfair business practices
15 (Cal. Bus. Prof. Code sections 17200, et seq.) against both Defendants.

16 **II. THE REMOVAL IS TIMELY**

17 44. Defendant Gordon was never validly served with service of process in
18 this matter. The thirty-day time to remove requires valid service of summons and
19 complaint. (*Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.* (1999) 526 U.S.
20 344, 354, 119 S.Ct. 1322, 1329.) Defendant Gordon has removed this action within
21 thirty (30) days of the Superior Court's January 27, 2015 ruling vacating the
22 Defendants' respective defaults on the basis of an attorney declaration of fault as to
23 ErGo Media and on the basis that Defendant Gordon was never served with
24 summons and complaint in this matter, which ruling was served by mail. The Court
25 ruled that the Defendants' respective answers were deemed filed as of January 27,
26 2015, at which time Defendant Gordon became a party to this matter. Plaintiff's bad
27 faith opposition to Defendant's relief from default prevented Defendant from

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1 appearing in this matter any earlier than January 27, 2015. Therefore, Defendant's
 2 removal based on diversity is timely under 28 U.S.C. §§ 1332, 1441(a), (b),
 3 1446(b), 1446(c)(1). No previous Notice of Removal has been filed or made with
 4 this Court for the relief sought herein.

5 **III. THIS COURT HAS ORIGINAL SUBJECT MATTER JURISDICTION**

6 45. This action could have been originally filed in this Court pursuant to
 7 28 U.S.C. § 1332 because complete diversity of citizenship exists between Plaintiff
 8 and Defendant ErGo Media and Defendant Gordon, and the amount in controversy
 9 as alleged by Plaintiff's individual claims in her Statement of Damages exceeds
 10 \$75,000, exclusive of interest and costs.

11 **A. Diversity of Citizenship Exists**

12 **1. Plaintiff Is A Citizen Of California.**

13 46. "An individual is a citizen of the state in which he is domiciled" *Boon v. Allstate Ins. Co.*, 229 F. Supp. 2d 1016, 1019 (C.D. Cal. 2002) (citing *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001)). For purposes
 14 of diversity of citizenship jurisdiction, citizenship is determined by the individual's
 15 domicile at the time that the lawsuit is filed. *Armstrong v. Church of Scientology*
 16 *Int'l*, 243 F.3d 546, 546 (9th Cir. 2000) (citing *Lew v. Moss*, 797 F.2d 747, 750 (9th
 17 Cir. 1986)). Evidence of continuing residence creates a presumption of domicile.
 18 *Washington v. Hovensa LLC*, 652 F.3d 340, 345 (3rd Cir. 2011); *State Farm Mut.*
 19 *Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 519 (10th Cir. 1994). Once the removing party
 20 produces evidence supporting that presumption, the burden shifts to the other party
 21 to come forward with contrary evidence, if any, in order to dispute domicile. *Id.*

22 47. Plaintiff avers that she "is now, and at all times mentioned herein was,
 23 an individual residing and doing business in the County of Los Angeles, State of
 24 California." Complaint (Exh. A), ¶ 1. Defendant's payroll and personnel records
 25 from May 2012 when Plaintiff was hired until Plaintiff's employment with
 26

27
 28

1 Defendants terminated on or about July 11, 2013, show Plaintiff's home address
 2 during that period as being continuously in Los Angeles, California. Gordon Decl.
 3 ¶s 3-4. Thus, Plaintiff was domiciled in California, and is therefore a citizen of
 4 California for purposes of diversity jurisdiction in this matter.

5 **2. Defendant Erik H. Gordon Is Domiciled in the State of
 6 Florida and is a Citizen of the State of Florida.**

7 48. As Established in Defendant's Motion for Relief from Default, which
 8 was granted on January 27, 2015, individual defendant Erik Gordon is domiciled in
 9 the State of Florida and is a citizen of the State of Florida. (See Exhibits T-W.)
 10 Erik Gordon has been domiciled in Florida since the fall of 2013 and was so
 11 domiciled and a citizen at the time this action was filed on February 28, 2014. He
 12 is still domiciled and a citizen of Florida at the time of this Notice of Removal.
 13 (Gordon Decl. ¶s 1,2)

14 **3. Defendant ErGo Media Capital, LLC Is A Citizen of
 15 Florida.**

16 49. For diversity purposes, a limited liability company's citizenship is
 17 determined by examining the citizenship of each member of the company. (28
 18 U.S.C. § 1332; *D.B. Zwirn Special Opportunities Fund, L.P. v. Mehrotra* (1st Cir.
 19 2011) 661 F3d 124, 125-126, *Rolling Greens MHP, L.P. v. Comcast SCH Holdings,*
 20 *L.L.C.* (11th Cir. 2004) 374 F3d 1020, 1021-1022) Erik Gordon is the sole member
 21 of ErGo Media Capital, LLC. (Gordon Decl. ¶ 1.)

22 50. ErGo Media Capital is currently and has been, since this action was
 23 commenced on February 28, 2014, a limited liability company. Because Erik
 24 Gordon is the only member, ErGo Media Capital is domiciled and a citizen of
 25 Florida for diversity purposes in this action. Gordon Decl. ¶s 1, 2 ,3 5. Currently
 26 and prior to and since the commencement of this action, ErGo has had its
 27 headquarters and principal place of business in New York. *Id.* ¶ 1, 3, 5. Plaintiff
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1 further so alleges in the Complaint: "Plaintiff ... herein alleges that Defendant
2 ERGO is, and at all time herein mentioned was, a limited liability company duly
3 organized and existing under the laws of the State of Delaware, with its principal
4 place of business in the [sic] New York . . ." Complaint (Exh. A) ¶ 2. Plaintiff's
5 allegation is relevant only in that, for purposes of diversity, Plaintiff alleges that
6 Defendant ErGo Media is not a citizen of the State of California, and thereby does
7 not defeat diversity.

8 51. Defendant ErGo is not now and was not at the time of the filing of the
9 lawsuit, a citizen of California within the meaning of the Acts of Congress relating
10 to the removal of causes. Defendant ErGo Media has never been organized or
11 registered under the laws of the State of California. ErGo Media is now, and ever
12 since this action commenced on February 28, 2014, has been, a citizen of Florida
13 for diversity purposes. 28 U.S.C. § 1332(a).

14 52. Pursuant to 28 U.S.C. § 1441(a), the residences of fictitious and
15 unknown defendants should be disregarded for the purposes of establishing removal
16 jurisdiction under 28 U.S.C. § 1332. *Fristos v. Reynolds Metals Co.*, 615 F.2d
17 1209, 1213 (9th Cir. 1980) (unnamed defendants are not required to join in a
18 removal petition). Thus, the inclusion of "Doe" defendants in Plaintiff's Complaint
19 has no effect on the ability to remove.

20 53. Accordingly, Plaintiff is a citizen of a state different from that of the
21 only proper defendants. Complete diversity therefore exists between the parties.

22 **B. The Amount in Controversy Requirement Is Satisfied.**

24 54. Removal is proper if, from the allegations of the Complaint and the
25 Notice of Removal, it is more likely than not that the amount in controversy
26 exceeds \$75,000. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 403-04 (9th
27 Cir. 1996); *Luckett v. Delta Airlines, Inc.*, 171 F.3d 295, 298 (5th Cir. 1999).

55. In determining whether the jurisdictional minimum is met, courts consider all alleged recoverable damages, including emotional distress damages, punitive damages, statutory penalties, and attorneys' fees. *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 347-48 (1977) (superseded by statute on other grounds); *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir. 2001); *Galt G/S v. JSS Scandinavia*, 142 F. 3d 1150, 1155-56 (9th Cir. 1998).

56. Plaintiff does not specifically quantify her damages in her Complaint. While Defendants denies any liability as to Plaintiff, the amount in controversy is determined based on Plaintiff's allegations in the complaint¹³ and in her Statement of Damages served on Defendant ErGo Media. (Plaintiff's Statement of Damages is attached as **Exhibit N** hereto). Plaintiff's Statement of Damages demonstrates that the amount in controversy exceeds \$75,000.

57. Plaintiff alleges that she was discriminated against, harassed, and wrongfully terminated. Plaintiff seeks:

- Pain, suffering, and inconvenience damages in the amount of \$2,000,000.00
- Emotional distress damages in the amount of \$1,000,000.00
- Loss of earnings in the amount of \$125,000.00
- Loss of future earnings in the amount of \$250,000.00
- Punitive damages in the amount of \$10,000,000.00
- attorneys' fees and costs

See Statement of Damages, Exhibit N.

58. Plaintiff alleges that she was wrongfully terminated on July 11, 2013. Plaintiff alleges that she “sustained and continues to sustain substantial losses in

¹³ See *Korn v. Polo Ralph Lauren Corp.*, 536 F.Supp.2d 1199, 1205 (E.D. Cal. 2008) (“[i]n measuring the amount in controversy, a court must assume that the allegations of the complaint are true and that a jury will return a verdict for the plaintiff on all claims made in the complaint. The ultimate inquiry is what amount is put ‘in controversy’ by the plaintiff’s complaint, not what a defendant will actually owe.”).

1 earnings and other benefits." *See* Complaint, ¶¶ 49, 57, 66, 83, 90, 112.

2 59. Plaintiff alleges that she was earning an annual salary of \$90,000.00
3 prior to her termination and, in 2012, received an additional holiday/end-of-the-year
4 cash bonus in the amount of \$8,250.00. (Complaint, ¶s 13, 28.) Based on Plaintiff's
5 alleged earnings in 2012, and her anticipated claim of lost earnings since her
6 termination on July 11, 2013, Plaintiff's loss of earnings claim exceeds \$100,000 as
7 of the present date.

8 60. Plaintiff alleges that she suffered emotional distress in an unspecified
9 amount. Complaint, ¶s 50, 58, 67, 75, 84, 91, 96-97, 103 and Prayer for Relief.
10 Courts have held that such allegations alone are sufficient to satisfy the amount in
11 controversy requirement. *See Egan v. Premier Scales & Sys.*, 237 F. Supp. 2d 774,
12 776 (W.D. Ky. 2002) (where plaintiff sought damages for embarrassment,
13 humiliation, and willful, malicious and outrageous conduct, the court held that the
14 defendant could "easily make the case that the claims are more likely than not to
15 reach the federal amount in controversy requirement"); *Simmons v. PCR Tech.*, 209
16 F. Supp. 2d 1029, 1031-35 (N.D. Cal. 2002) (holding that Plaintiff's damage claim,
17 including lost wages, medical expenses, emotional distress and attorneys' fees, was
18 enough to put the amount in controversy above \$75,000).

19 61. In addition to compensatory damages, Plaintiff's claims for punitive
20 damages are part of the amount in controversy when determining diversity
21 jurisdiction. *Gibson v. Chrysler Corp.*, 261 F.3d 927, 945 (9th Cir. 2001); *see also*
22 *Aucina*, 871 F. Supp. at 334 (S.D. Iowa 1994) ("[b]ecause the purpose of punitive
23 damages is to capture the Defendant's attention and deter others from similar
24 conduct, it is apparent that the plaintiff's claim for punitive damages alone might
25 exceed [the jurisdictional amount]").

26 62. Plaintiff also seeks to recover attorneys' fees in an amount to be
27 determined at trial. *See* Complaint, ¶s 52, 60, 69, 77, 86, 113. *Guglielmino v.*

1 *McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007) (“[w]here an underlying
2 statute authorizes an award of attorneys’ fees, either with mandatory or
3 discretionary language, such fees may be included in the amount in controversy”).
4 Under California Government Code § 12965(b), attorneys’ fees for cases brought
5 under California’s FEHA are authorized. Thus, Plaintiff’s claims for lost earnings,
6 emotional distress, and attorneys’ fees clearly place more than \$75,000 in
7 controversy, based on Plaintiff’s allegations and assertions in her Statement of
8 Damages.

9 63. Although Defendant denies Plaintiff’s factual allegations and denies
10 that she is entitled to any damages or other relief, based on Plaintiff’s allegations
11 and prayer for relief and her Statement of Damages, the amount in controversy
12 associated with the claims alleged in the Complaint, if proven, would exceed the
13 \$75,000 threshold set forth under 28 U.S.C. § 1332(a).

14 **IV. THE OTHER PREREQUISITES FOR REMOVAL HAVE BEEN**
15 **SATISFIED**

16 64. As set forth above, Defendant Erik Gordon was never served with
17 Summons and Complaint in this matter. On that basis, his default was set aside and
18 vacated and his answer was deemed filed on January 27, 2015. This Notice of
19 Removal is filed within thirty days of the date Erik Gordon became a party to this
20 action. Therefore, it is timely under 28 U.S.C. § 1446(b).

21 65. As Plaintiff originally filed this action in the Superior Court of the
22 State of California, County of Los Angeles, removal to the United States District
23 Court, Central District of California, is proper under 28 U.S.C. § 1441(a).

24 66. The prerequisites for removal under 28 U.S.C. §§ 1332 and 1441 have
25 been met.

26 67. As required by 28 U.S.C. § 1446(d), Defendant will provide notice of
27 this removal to Plaintiff through her attorneys of record.

1 68. As required by 28 U.S.C. § 1446(d), a copy of this Notice will be filed
2 with the Superior Court of the State of California, County of Los Angeles.

3 69. Defendant has sought no similar relief.

4 70. Defendant's Answer was deemed filed in California Superior Court for
5 the County of Los Angeles on January 27, 2015. (See Exhibit NN)

6 71. Plaintiff apparently made several unsuccessful attempts to perfect
7 Defendants' respective defaults in this matter and refused Defendants' requests to
8 set aside the defaults, thus forcing Defendants to bring respective motions for relief.
9 Consequently, the Superior Court file in this matter contains substantial pleadings
10 and documents filed by Plaintiff as well as Defendants' motions for relief prior to
11 the vacation of Defendants' defaults, as well as subsequent pleadings by Plaintiff.

12 72. The pleadings and documents that have been filed or served in this
13 matter as contained in the Superior Court file are attached hereto as Exhibits A
14 through SS, inclusive as identified above.

15 73. To Defendant's knowledge, no other documents have been filed or
16 served upon it, and there are no other named defendants. Consequently, the
17 attached exhibits, as required by 28 U.S.C. § 1446(a), constitute all the process,
18 pleadings, and orders served on or filed by the Plaintiff and/or the named
19 defendants in this action as contained in the Superior Court file.

20 74. If any question arises as to the propriety of the removal of this action,
21 Defendant requests the opportunity to present a brief in support of its position that
22 this case is removable.

23 ///

24 ///

25 ///

26 ///

27 ///

28

MORGAN, LEWIS &
BOCKIUS LLP
ATTORNEYS AT LAW
LOS ANGELES

1 **V. CONCLUSION**

2 75. Based on the foregoing, Defendant respectfully requests that this
3 action be removed from the Superior Court of the State of California, County of
4 Los Angeles, to the United States District Court for the Central District of
5 California, and that all further proceedings in this matter take place in the United
6 States District Court for the Central District of California.

7
8 Dated: February 26, 2015

9 MORGAN, LEWIS & BOCKIUS LLP
10 JASON S. MILLS
11 TERI E. KIRKWOOD

12 By /s/Teri E. Kirkwood
13 TERI E. KIRKWOOD
14 Attorneys for
15 ERGO MEDIA CAPITAL, LLC and
16 ERIK H. GORDON

1
2 **PROOF OF SERVICE**

3 I am a citizen of the United States and employed in Los Angeles, California. I
4 am over the age of eighteen (18) and not a party to the above-entitled action.

5 On April 2, 2015 I served the foregoing document described as:

6 **MOTION TO DISMISS ACTION FOR LACK OF PERSONAL JURISDICTION**
7 **AND IMPROPER VENUE, OR, IN THE ALTERNATIVE, TO DISMISS OR**
8 **TRANSFER THE ACTION FOR FORUM NON-CONVENIENS;**
9 **MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF**
10 **LOTTI BLUENMER IN SUPPORT THEREOF**

11 on the following interested party in this action:

12 **Plaintiff ERGO MEDIA CAPITAL, LLC; Plaintiff CEE GEE CEE, LLC, and**
13 **Plaintiff ERIK H. GORDON**

14 **X** by placing **X** a true copy the original in a sealed envelope addressed as
15 follows:

16 *Christopher A. Parlo, Esq.*
Andriette A. Roberts, Esq.
MORGAN EWIS & BOCKIUS LLP
101 Park Avenue
New York, NY 10178

17 **X** **BY MAIL:** I am "readily familiar" with the firm's practice of collection and
18 processing correspondence for mailing. Under that practice it would be
19 deposited with U.S. postal service on that same day with postage thereon fully
20 prepaid at Los Angeles, California in the ordinary course of business. I am
aware that on motion of the party served, service is presumed invalid if postal
cancellation date or postage meter date is more than one day after date of
deposit for mailing in affidavit.

21 **BY FEDERAL EXPRESS OVERNIGHT MAIL**

22 **BY EMAIL to:**

23 **BY PERSONAL SERVICE:** I delivered such envelope by hand to the
24 addressees as listed above.

25 I declare under penalty of perjury under the laws of the State of California that
the above is true and correct.

26 Executed on April 2, 2015, at Los Angeles, California.

27
28 